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IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

THE DELAWARE RIVER AND BAY AUTHORITY,
Petitioner,

v.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 68, *et al.*,
Respondents.

Petition for a Writ of Certiorari to the Supreme Court of New Jersey

PETITION FOR A WRIT OF CERTIORARI

JOHN G. ROBERTS, JR. *
GREGORY G. GARRE
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5810

O. FRANCIS BIONDI
JON E. ABRAMCZYK
MORRIS, NICHOLS, ARSHT & TUNNELL
1201 North Market Street
P.O. Box 1347
Wilmington, Delaware 19899
(302) 658-9200
Counsel for Petitioner

Of Counsel:
WAYNE J. POSITAN
LUM, DANZIS, DRASCO, POSITAN & KLEINBERG, LLC
103 Eisenhower Parkway
Roseland, N.J. 07068
(201) 403-9000
* Counsel of Record

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QUESTION PRESENTED

Whether the courts of one state unilaterally may impose upon an interstate authority established pursuant to the Compact Clause of the Constitution (Art. I, § 10, cl. 3) additional duties or obligations implied from the general laws or policies of the compact states, when doing so would contravene express terms of the interstate compact, and when neither the compact states nor Congress have consented to the imposition of such additional duties or obligations upon the interstate authority. The New Jersey high court—in direct conflict with the decisions of this Court, of other state high courts, and of the federal courts —answered that question in the affirmative, and unilaterally imposed upon petitioner the duty to bargain collectively with its employees.

PARTIES TO THE PROCEEDING

Petitioner, defendant-petitioner below, is the Delaware River and Bay Authority ("DRBA" or "Authority"), a government agency created by an interstate compact entered into between the States of New Jersey and Delaware, and approved by Congress. *See* Del. Code Ann. tit. 17, § 1701 *et seq.*; N.J. Stat. Ann. § 32:11E-1 *et seq.*; H.R.J. Res. 783, Pub. L. No. 87-678, 76 Stat. 560 (1962).

Respondents, plaintiffs-respondents below, are the International Union of Operating Engineers, Local 68, AFL-CIO ("Local 68"), DRBA Employees Association a/w International Union of Operating Engineers, Local 68, AFL-CIO ("Association"), Oliver Twist, Judith Twist, Kevin Bailey, Mark P. DeSorbo, David R. Oat, David A. Cusick, John M. Bunting, A.R. Simmons, J. David Johnson, Roy S. MacCulloch, Daniel A. Slater, Sr., Gerald H. Foster, Sr., and David E. Barnett. Local 68 is a labor union in New Jersey. The Association is an organization of DRBA employees. The individuals are DRBA employees who belong to Local 68 and the Association; they sued on their own behalf and on behalf of similarly situated persons. App. 3a, 23a-24a; Br. for Pls.-Appellants in N.J. Super. Ct., pp. 6-7.

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Petition for a Writ of Certiorari to the Supreme Court of New Jersey

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PETITION FOR A WRIT OF CERTIORARI

The Delaware River and Bay Authority ("DRBA" or "Authority") petitions for a writ of certiorari to review the judgment of the New Jersey Supreme Court.

OPINIONS BELOW

The New Jersey Supreme Court decision in this case is reported at 688 A.2d 569 and reprinted in the appendix hereto ("App.") at 1a. That opinion affirmed the decision of the Appellate Division of the New Jersey Superior Court, which is unreported and reprinted at App. 22a. That opinion reversed the order of the Chancery Division of the Superior Court dismissing the complaint, which is unreported and reprinted at App. 31a. A transcript of the Chancery Division's bench ruling in support of that order is reprinted at App. 33a.

JURISDICTION

The New Jersey Supreme Court entered judgment on February 11, 1997, App. 1a, and denied DRBA's timely motion for reconsideration in an order filed on April 24, 1997. *Id.* 52a. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, § 10, clause 3 of the United States Constitution provides, in pertinent part: "No State shall, without the Consent of Congress, * * * enter into any Agreement or Compact with another State." H.R.J. Res. 783, Pub. L. No. 87-678, 76 Stat. 560 (1962)—the Joint Resolution approving the Compact establishing DRBA—is reprinted at App. 53a. The Compact itself appears as part of the Joint Resolution, and is reprinted at App. 53a. H.R.J. Res. 657, Pub. L. No. 101-565, 104 Stat. 2784 (1990), which approved certain amendments to the Compact, is reprinted at App. 70a.

INTRODUCTION

In establishing a federal Constitution, the framers included a mechanism to enable states to address regional concerns extending beyond a particular state's boundaries without requiring a federal resolution. This mechanism is the Compact Clause (Art. I, § 10, cl. 3), which, while permitting states to join together to advance regional interests, is predicated on the requirement of congressional consent. In the past century in particular, the Compact Clause has been utilized with Congress' consent to great effect by states to address regional issues of enormous importance—including interstate transportation, waste disposal, and allocation of natural resources—as well as to spur economic development. This ingenious feature of our federal system has been so effective that this Court has observed that the interstate "compact is more than a supple device for dealing with interests con-

fined within a region," "it is also a means of safeguarding the national interest." *West Virginia ex rel. Dyer* v. *Sims*, 341 U.S. 22, 27 (1951).

This case presents a question of fundamental importance to the future of the interstate compact device. The New Jersey high court below unilaterally imposed upon DRBA the new and additional obligation of having to bargain collectively with its employees, even though imposition of that obligation contravenes the express terms of the Compact, and even though neither Congress nor the compact states themselves have consented to the imposition of that obligation upon the bi-state compact authority. In doing so, the court disregarded cardinal principles of this Court's Compact Clause jurisprudence, and split with the decisions of other state high courts and of the federal courts, which have held—correctly—that state courts cannot unilaterally impose implied obligations on interstate compact authorities. The end result for DRBA and the other Compact Clause entities operating in the New Jersey region is "discord and a destruction of the purposes for which * * * bi-state agencies are formed." App. 20a (Garibaldi, J.) (internal quotation marks omitted).

STATEMENT OF THE CASE

1. Like many states in the Union, Delaware and New Jersey are separated by a common natural boundary—the Delaware River and Bay. To facilitate interstate transportation across this boundary and promote economic growth, Delaware and New Jersey formed the Delaware-New Jersey Compact ("Compact"). That Compact— embodied in virtually identical legislation passed by each state, Del. Code Ann. tit. 17, § 1701 *et seq.*; N.J. Stat. Ann. § 32:11E-1 *et seq.*—established DRBA "as an agency of government" of both states charged with exercising the "essential government functions" necessary to effectuate the purposes of the Compact. Compact art. IV. Congress formally gave its consent to the Compact

on September 20, 1962, by passing a Joint Resolution incorporating the terms of the Compact. H.R.J. Res. 783, Pub. L. No. 87-678, 76 Stat. 560 (1962).

Pursuant to the terms of the Compact, DRBA is governed by a twelve-member board of commissioners, consisting of six residents of each state, appointed by the governor of their respective states. Compact art. V. Any action taken by the Authority must be approved by at least four commissioners from each state; the governor of either state may cancel the vote of any one or more of its commissioners, effectively giving each state the ability to veto DRBA actions. *Id.* art. VI. DRBA is vested with broad authority to fulfill its mission, including the authority to "adopt rules and regulations * * * to carry out and discharge its powers." *See id.* art. VII. The Compact gives both states the right unilaterally to confer "additional powers" upon DRBA by legislation; but it prevents *either* state from imposing upon DRBA "additional duties or obligations * * * without authorization by the law of *both* states." *Id.* art. VIII (emphasis added).[1]

As millions of daily commuters, summer vacationers, and others traveling along the eastern seaboard have come to learn, DRBA operates the Delaware Memorial Bridge between Pennsville, New Jersey and New Castle, Delaware, as well as the ferry service between Cape May, New Jersey and Lewes, Delaware. DRBA has more than 400 permanent, full-time employees, most of whom live and work in Delaware, and operates facilities in both

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[1] Article VIII of the Compact provides:

> For the purpose of effectuating the authorized purposes of the Authority, additional powers may be granted to the Authority by legislation of either State without the concurrence of the other, and may be exercised within such State, or may be granted to the Authority by Congress and exercised by it; but *no additional duties or obligations shall be undertaken by the Authority under the law of either State or of Congress without authorization by the law of both States.* [Compact art. VIII (emphasis added).]

states. The Authority's headquarters and administrative facilities, maintenance and toll facilities for the Delaware Memorial Bridge, and the Lewes terminal for the Cape May-Lewes ferry are located in Delaware, whereas the Authority's principal terminal for berthing ferries is located in Cape May, New Jersey. *See* Def.'s Br. in Supp. of Mot. to Dismiss Pls.' Compl. and in Opp. to Pls.' Order to Show Cause ("Def.'s Br. in Supp. of Mot. to Dismiss"), pp. 3-4.

In 1990 the Compact was amended to broaden DRBA's authority to undertake certain economic development projects, and to permit the use of toll revenues to finance such projects. The 1990 amendments—like the formation of the Compact itself—were effected by the passage of virtually identical legislation by each state, 67 Laws of Del., ch. 252; 192 Laws of N.J., ch. 192, which was then submitted to and approved by Congress in a Joint Resolution signed by the President, incorporating the amendments. H.R.J. Res. 657, Pub. L. No. 101-565, 104 Stat. 2784 (1990). In particular, the 1990 amendments added a new article to the Compact (Art. XXII), providing that, in planning and implementing any project (other than a crossing), DRBA must comply with the environmental laws of the state in which the project is located. 104 Stat. at 2795.[2]

2. This case arises from a dispute between DRBA and certain of its employees over the Authority's duty to bargain collectively with its employees. The Compact explicitly authorizes DRBA to "employ such * * * employees as it may require for the performance of its duties and to fix and determine * * * all * * * conditions and terms of employment." Compact art. VII(e). Upon their hiring, DRBA employees are given a copy of

[2] Article XXII goes so far as to identify specific environmental laws that apply to projects depending on their location, including the Delaware Coastal Zone Act, the New Jersey Wetlands Act, and the New Jersey Coastal Area Facility Review Act. 104 Stat. at 2795.

DRBA's Personnel Manual. Article XIV of that Manual specifies that DRBA has no "obligation to engage in collective bargaining with its employees or their chosen representatives," and DRBA does not in fact engage in such negotiations. App. 2a-3a. The Authority does, however, permit its employees to join and designate a labor organization as their individual representative for the purpose of presenting certain employment-related grievances. DRBA Personnel Manual arts. XV and XIX; App. 3a.

In July 1986 twenty-six employees at DRBA's Cape May, New Jersey facility formed the DRBA Employees Association ("Association") for the purpose of presenting individual employee grievances to the Authority in accordance with DRBA policy. The Association is not, and has never been, recognized as a collective bargaining agent for DRBA employees.[3] In August 1993 a labor union, International Union of Operating Engineers, Local 68, AFL-CIO ("Local 68"), sought to "affiliate" with the Association and to obtain recognition as the collective bargaining agent of Association members. Two months later, Local 68 renewed that request, then instituted this action in New Jersey state court, seeking an order compelling DRBA to hold an election, recognize Local 68 as a collective bargaining representative following the election, and engage in collective negotiations with the Association. App. 3a.

In support of this demand, respondents did not point to any specific provision of the Compact obligating DRBA to bargain collectively with its employees or their representatives. Instead, they maintained that "state regula-

[3] Shortly after it was formed, the Association sought recognition from DRBA as the exclusive collective bargaining agent of its members; DRBA denied that request. As a result, in the past ten years, the Association's role vis-à-vis DRBA has been limited to presenting individual employee grievances and proposals, in accordance with the procedure set forth in Article XIX of DRBA's Personnel Manual. *See* App. 3a.

tion of a bi-state agency can be sustained on the basis that there are substantially similar legislative acts in both states," and urged the New Jersey courts to *imply* from the general laws of the compact states a collective bargaining obligation binding on DRBA. Pls.' Br. in Supp. of Order to Show Cause, p. 15.[4] DRBA moved to dismiss.

3. On November 19, 1993, the Chancery Division of the New Jersey Superior Court, Cape May County, granted DRBA's motion. App. 31a. In an accompanying bench ruling, the court—invoking this Court's Compact Clause precedents—explained that, "since interstate compacts are not a product of a single state, no creat[or] state can unilaterally impose additional powers, duties or responsibilities that infringe on the * * * compact." *Id.* 49a. "[T]he New Jersey Courts [therefore] cannot * * * dictate the policy of [DRBA]." *Id.* 50a. The Chancery Division found that doing so "would be intrusive to running [DRBA]," especially in the area of "[c]ollective negotiations." *Id.* 49a-50a. Moreover, it explained, "for a [Court] to intrude in this area * * * is rather dangerous and * * * raises conflicts not only * * * between the states, but within this state." *Id.* 51a. The court thus held that it was without jurisdiction to hear the case and, in any event, lacked authority to grant the requested relief. *Id.* 50a-51a.

On August 2, 1995, a three-judge panel of the Appellate Division of the New Jersey Superior Court reversed.

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[4] Respondents relied in principal part upon N.J. const. art. I, § 19; N.J. Stat. Ann. § 34:13A-1 tc -29; and Del. Code Ann. tit. 19, §§ 1301-12 (1985 & Supp. 1992), *repealed and reenacted by* 69 Del. Laws ch. 466 (1994), which entitle certain state and local employees to join labor unions and to negotiate collectively with their employers through a representative of their choosing. None of those general labor laws—or any other provision cited by respondents—expressly refers to or by its terms is made applicable to DRBA or its employees, or any other interstate compact authorities. Nor is there any indication that they were in fact intended to apply to interstate governmental authorities such as DRBA.

That court held at the outset that it had jurisdiction over the dispute pursuant to Article XV of the Compact, which provides that "[j]udicial proceedings to review * * * [any] action of the authority or to determine the meaning or effect thereof, may be brought in [the] court[s] of each state." *See* App. 26a. Turning to the merits, the court then held that, while "neither [compact] state may individually impose its will on a bi-state agency," an "agency may be made subject to complementary or parallel state legislation." *Id.* Thus, while it acknowledged that the Delaware and New Jersey labor laws are different, *id.* 27a, the Appellate Division—unlike the trial court—saw fit to "impl[y]" from those laws an "agreement that public employees, including DRBA's, may organize and designate a representative to engage in collective negotiations on their behalf." *Id.* 29a.

4. The New Jersey high court—exercising its discretion to decide cases of "general public importance," N.J. Rule Governing App. Prac. 2:12-4—granted DRBA's petition for certification, App. 4a,[5] and, on February 11, 1997, affirmed. *Id.* 14a. Like the Appellate Division, a majority of the high court justices acknowledged that "[a] single state may not unilaterally impose additional duties on a bi-state agency," but ruled that one state's court may subject a bi-state agency to the "complementary or parallel legislation" of both states under an implied-consent theory. *Id.* 9a-10a. In so ruling, the majority recognized that—because neither state had adopted labor legislation specifically applying to DRBA, or had designated an administrative tribunal to resolve labor disputes involving DRBA (as the states had done with respect to particular employers)—a "myriad of issues * * * will arise during the

[5] In its petition for certification, DRBA argued, *inter alia*, that "the Appellate Division's decision conflicts with federal constitutional law," as well as with this Court's Compact Clause decisions, insofar as it permits the courts of one compact state unilaterally to impose additional obligations upon an interstate compact entity in direct contravention of the Compact. Pet. for Certif., pp. 1, 3, 4. *See also* Reply Br. in Supp. of Pet. for Certif., pp. 2, 4 n.1.

course of collective negotiations." *Id.* 14a (internal quotation marks omitted). Nevertheless, the majority held that the New Jersey courts were free to resolve these issues, and unilaterally to decide which state's laws govern when the New Jersey and Delaware laws conflict. *Id.*

Justice Garibaldi dissented. She reasoned that, "[a]lthough in some situations an agency may be subject to complementary or parallel legislation when the issue is limited to interpreting a state law or regulation, such legislation cannot and should not be used to repeal the Compact." *Id.* That is precisely what the New Jersey courts had done here, since "[r]equiring the DRBA to negotiate collectively with its employees most definitely will impose 'additional duties or obligations' on it," in direct contravention not only of Article VIII of the Compact, requiring *both* states by law to consent to such a result, but also of Article VII(e) of the Compact, vesting in DRBA the authority to fix the terms and conditions of employment, which was "intended to keep matters concerning labor relations and collective negotiations in the hands of the DRBA." *Id.* 15a.

To Justice Garibaldi, "[p]ermitting similar legislative acts of compacting states to amend a compact completely disregards the long-standing precedents requiring legislatures to agree expressly before a state can impose duties and obligations on a bi-state agency," resulting in "discord and a destruction of the purposes for which such bi-state agencies are formed." *Id.* 19a-20a (internal quotation marks omitted). Indeed, "[a]lthough the labor laws of New Jersey and Delaware are based on similar public policies, they differ in [numerous significant respects]." *Id.* 20a-21a.[6] The majority's decision, therefore, "will create

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[6] Justice Garibaldi noted the following conflicts: "(1) each States' statute describes a different procedure for determining the employee-bargaining unit; (2) the provisions for determining unfair labor practices and enforcing the statutes are different; (3) the New Jersey statute provides for arbitration of disputes whereas the Delaware statute does not; and (4) neither statute indicates in its

uncertainty as to which state's law and administrative procedures apply to a given situation," precipitating precisely the sort of confusion that New Jersey and Delaware sought to *avoid* when they formed DRBA and specified in Article VIII of the Compact that the interstate entity could not be subjected to additional duties or obligations without the consent of both states. *Id.*

DRBA filed a timely motion for reconsideration (*see* N.J. Rule Governing App. Prac. 2:11-6), which was denied in an order filed on April 24, 1997. App. 52a.[7]

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declaration or purpose that it intended for the statute to apply to the DRBA." App. 21a. (citations omitted).

[7] The Appellate Division had remanded for a "determin[ation] how the complementary labor policies of New Jersey and Delaware, as expressed in their parallel labor legislation, are to be effectuated." App. 30a. The state high court, however, has conclusively decided the federal constitutional question presented. That question, moreover, is controlling with respect to respondents' complaint and request for relief. The limited remand is designed solely to determine how—not whether—DRBA will be required to bargain collectively with its employees. There is no non-federal ground upon which DRBA could prevail that would obviate the need to address the threshold federal question presented; "the federal issue, finally decided by the highest court in the State, will survive and require decision regardless of the outcome of future state-court proceedings." *Cox Broad. Corp.* v. *Cohen*, 420 U.S. 469, 480 (1975). At the same time, "reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action." *Id.* at 482-483. In these circumstances, the New Jersey Supreme Court judgment is plainly "final" for purposes of 28 U.S.C. § 1257(a), and thus subject to review by this Court. *See, e.g., ASARCO Inc.* v. *Kadish*, 490 U.S. 605, 612 (1989); *Duquesne Light Co.* v. *Barasch*, 488 U.S. 299, 306-307 (1989); *Mississippi Power & Light Co.* v. *Mississippi ex rel. Moore*, 487 U.S. 354, 370 n.11 (1988); *Goodyear Atomic Corp.* v. *Miller*, 486 U.S. 174, 179-180 (1988).

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S COMPACT CLAUSE PRECEDENTS, AS WELL AS WITH THE DECISIONS OF OTHER STATE HIGH COURTS AND THE FEDERAL COURTS.

1. The Compact Clause of the Constitution permits a state to "enter into any Agreement or Compact with another State," but only with "the consent of Congress." U.S. Const. art. I, § 10, cl. 3. Through this Clause "'[t]he framers * * * astutely created a mechanism of legal control over affairs that are projected beyond State lines and yet may not call for, nor be capable of, national treatment.'" *Petty* v. *Tennessee-Missouri Comm'n*, 359 U.S. 275, 282 n.7 (1959) (quoting Felix M. Frankfurter & James M. Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments*, 34 Yale L.J. 685, 695 (1925)). In the past century in particular scores of interstate compacts have been formed by the states with Congress' consent to address regional problems or issues that often are of genuine national import, and to resolve interstate disputes. *See West Virginia ex rel. Dyer* v. *Sims*, 341 U.S. at 26-28.[8]

This case presents a basic constitutional question of overriding importance to the interstate compact device:

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[8] There are more than 175 interstate compacts in existence across the country today, addressing a variety of regional problems of enormous importance to affected states—and, indeed, to the effective governance of the Union as a whole—including mass transit, energy conservation, fisheries, flood control, placement of children, waste disposal, economic development, regulation of land and water resources, law enforcement and corrections, and taxation. *See* Judith Resnik, *Afterword: Federalism's Options*, 14 Yale L. & Pol'y Rev. 465, 502-503 (1996); Kevin J. Heron, *The Interstate Compact in Transition: From Cooperative State Action to Congressionally Coerced Agreements*, 60 St. John's L. Rev. 1, 2 (1985); The Council of State Governments, *Interstate Compacts 1783-1970*, at 4 (1971). *See also* Frankfurter & Landis, *supra*, at 730-758 (cataloguing interstate compacts from colonial to modern times).

whether the courts of one state unilaterally may subject an interstate compact authority to additional duties or obligations implied from the general laws or policies of the compact states, when, as here, doing so would contravene express terms of the compact without the actual consent of the compact states or Congress.[9] In answering that question in the affirmative, the New Jersey high court contravened this Court's Compact Clause precedents, and split with the decisions of other state high courts and the federal courts on the precise question presented. Those other courts hold—consistent with this Court's precedents—that the fact that "two [compact] States have evinced the same, or similar, public policy * * * by enacting similar * * * laws is *not* sufficient * * * to render [a compact] properly amended or supplemented." *Malverty* v. *Waterfront Comm'n of New York Harbor*, 524 N.E.2d 421, 422 (N.Y. 1988) (emphasis added).

2. This Court's Compact Clause decisions establish several basic guideposts, among which is that a single state may not attempt to regulate or control a Compact Clause entity. As the Court recently explained in *Hess* v. *Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 42 (1994), "within any single State in our representative democracy, voters may exercise their political will to direct state policy; bi-state entities created by compact, however, are not subject to the unilateral control of any one of the States that compose the federal system." *See id.* at 47 ("no one State alone can control the course of a Compact Clause entity"); *West Virginia ex rel. Dyer* v. *Sims*, 341 U.S. at 28 ("It requires no elaborate argument to reject the suggestion that an agreement solemnly entered into between

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[9] This question is plainly federal in nature, *see Cuyler* v. *Adams*, 449 U.S. 433, 438 (1981); *Sims*, 341 U.S. at 26; *Delaware River Joint Toll Bridge Comm'n* v. *Colbrunn*, 310 U.S. 419, 427 (1940), turning on a proper application of the constitutionally grounded principles established by this Court's Compact Clause precedents, as well as construction of Article I, § 10, cl. 3 of the Constitution and the federal law embodied by the Compact.

States * * * can be unilaterally nullified, or given final meaning by an organ of one of the contracting States.").[10]

This principle is grounded in the unique position that Compact Clause entities occupy in our federal system. "The States, as separate sovereigns, are the constituent elements of the Union. Bistate entities, in contrast, typically are creations of three discrete sovereigns: two States and the Federal government." *Hess*, 513 U.S. at 40. A state, in entering into a compact, surrenders a portion of its own sovereignty to the other compact states and the federal government, and agrees to be bound by the compact terms and conditions, absent the concerted action of the compact states to alter them with the consent of Congress. *See United States* v. *Bekins*, 304 U.S. 27, 52 (1938); Marian E. Ridgeway, *Interstate Compacts: A Question of Federalism* 300 (1971) ("An interstate compact, by its very nature, shifts a part of a state's authority to another state or states, or to the agency the several states jointly create to run the compact").

The New Jersey Supreme Court decision—permitting the courts of one state unilaterally to subject an interstate compact authority to additional obligations or duties in direct contravention of the compact without the express consent of the compact states or Congress—violates this cardinal rule. Indeed, as Justice Garibaldi put it, the New Jersey Supreme Court below "has done what the Legislatures of New Jersey and Delaware have not—amend the congressionally-approved Interstate Compact * * * between Delaware and New Jersey to require [DRBA] to negotiate collectively with its employees." App. 14a. In the process, that court not only has imposed *its* will on the compact authority and the compact states—which, it

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[10] *See also Northeast Bancorp, Inc.* v. *Board of Governors*, 472 U.S. 159, 175 (1985) ("classic indicia of a compact are missing" where "each State is free to modify or repeal its law unilaterally"); *Port Auth. Trans-Hudson Corp.* v. *Feeney*, 495 U.S. 299, 315 (1990) (Brennan, J., concurring in part and concurring in judgment) ("it is not within the autonomous power of any State to * * * regulate an interstate agency").

is undisputed, have never specifically agreed to the imposition of an additional collective bargaining duty upon DRBA, as required by Article VIII of the Compact, *see* note 1, *supra*—but it has eliminated Congress' constitutionally mandated consent role in the compact amendment process.[11]

"The requirement of congressional consent is at the heart of the Compact Clause." *Cuyler* v. *Adams*, 449 U.S. at 439. "By vesting in Congress the power to grant or withhold consent, or to condition consent on the States' compliance with specified conditions, the Framers sought to ensure that *Congress* would maintain ultimate supervisory power over cooperative state action that might otherwise interfere with the full and free exercise of federal authority." *Id.* at 439-440 (emphasis added). The decision below circumscribes Congress' constitutionally mandated consent role, because it permits the courts of a single compact state to amend an interstate compact without the consent of Congress, let alone the legislatures of the compact states. The result is to transfer from Congress to this Court, exercising its certiorari jurisdiction or, in direct disputes between compact states, its original jurisdiction, the "ultimate supervisory power" (*id.*) over interstate compacts—in direct conflict not only with *Cuyler*, but with the text of the Compact Clause as well.

At the same time, the New Jersey Supreme Court—again, in direct contravention of this Court's precedents—has assumed the authority to alter the terms of a compact that is federal, not state, law. "[O]nce given, congressional consent transforms an interstate compact within this Clause into a law of the United States." *Texas* v. *New*

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[11] As the state delegates to the negotiations that resulted in the Delaware-New Jersey Compact themselves recognized: "A change in the terms of an existing agreement is itself an agreement. Only the States may enter into such subsequent agreement, with the consent of Congress." DRBA, *Minutes of Meeting Between Delaware and New Jersey Representatives Leading to the Preparation of a Compact Between New Jersey and Delaware* 27 (1963) (summary analysis of report to the Governor of the State of Delaware).

Mexico, 462 U.S. 554, 564 (1983) (internal quotation marks omitted). *See Cuyler*, 449 U.S. at 438-439; *Petty* v. *Tennessee-Missouri Comm'n*, 359 U.S. at 278. "One consequence of this metamorphosis is that, unless the compact to which Congress has consented is somehow unconstitutional, *no court* may order relief inconsistent with its express terms." *Texas*, 462 U.S. at 564 (emphasis added). In ordering DRBA to bargain collectively with its employees—in plain derogation of Articles VII(e) and VIII of the Compact—the New Jersey Supreme Court did just that, prescribing relief that even this Court is without authority to confer. *See id.*[12]

More fundamentally, because the New Jersey Supreme Court decision amends the Compact, the state high court, in effect, made *federal* law. That anomalous result underscores the impropriety of the New Jersey rule. Federal law—the Compact (Art. VIII) and the U.S. Constitution

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[12] The same conclusion follows under the principles governing the construction of interstate compacts. "A Compact is, after all, a contract." *Texas* v. *New Mexico*, 482 U.S. 124, 128 (1987) (internal quotation marks omitted). *See Oklahoma* v. *New Mexico*, 501 U.S. 221, 235 n.5 (1991) ("a congressionally approved compact is both a contract and a statute"); *id.* at 242 (Rehnquist, C.J., joined by O'Connor, Scalia, and Kennedy, JJ., concurring in part and dissenting in part) ("An interstate compact, though provided for in the Constitution, and ratified by Congress, is nonetheless essentially a contract between signatory States"). As such, "[i]t remains a legal document that must be construed and applied in accordance with its terms," *Texas* v. *New Mexico*, 482 U.S. at 128.

Courts—including this Court—lack the authority unilaterally to alter or reform the terms of such contracts. *See Texas* v. *New Mexico*, 462 U.S. at 566 (rejecting argument "that reformation of the Compact is within this Court's equitable powers"); *Oklahoma* v. *New Mexico*, 501 U.S. at 243 (Rehnquist, C.J., joined by O'Connor, Scalia, and Kennedy, JJ., concurring in part and dissenting in part) (Court lacks authority to "var[y] the terms of a contract to which the States of Oklahoma, New Mexico, and Texas freely agreed"). The New Jersey courts below have—in direct conflict with these precedents—varied the terms of the Delaware-New Jersey Compact by imposing on DRBA an additional collective bargaining duty without the consent of either compact state or Congress, in contravention of Articles VII(e) and VIII of the Compact.

(Art. I, § 10, cl. 3)—establish a detailed legislative process for amending the Compact and imposing additional obligations on DRBA. That process—quite unlike the one sanctioned by the New Jersey courts—requires the legislative consent of both states and Congress. Thus, when New Jersey and Delaware were in fact of one mind to subject DRBA to their parallel *environmental* laws, they each debated and passed nearly identical legislation—stating in express terms that the legislation was intended to apply to DRBA and to amend the Compact—that was then submitted by the states to Congress, which granted its consent by passing a Joint Resolution incorporating the amendment. *See supra* at 5.[13]

3a. The conflict is even more acute at the lower court level. For example, the New Jersey Supreme Court decision directly conflicts with the New York high court decision in *Malverty* v. *Waterfront Comm'n of New York Harbor*. In that case a former licensed dockworker sought a court order compelling the Waterfront Commission of New York Harbor ("Waterfront Commission")—an inter-

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[13] The contrast between the process by which the Compact was amended by the New Jersey courts below to impose upon DRBA an additional collective bargaining obligation, and the process by which it was amended by the compact states in 1990 to impose upon DRBA an additional obligation to comply with the states' respective environmental laws, could not be more stark. Prior to the 1990 amendments, (1) each compact state passed legislation stating that it applied to DRBA, was intended to amend the Compact, and would take effect only upon the passage of companion legislation by the other state and the consent of Congress, 1989 N.J. Laws, chs. 191 & 192; 67 Del. Laws, chs. 252 & 253 (1989); (2) legislation seeking the constitutionally required congressional consent was then introduced in both Houses of Congress, H.R.J. Res. No. 657, 101st Cong. (1990) (enacted); S.J. Res. No. 373, 101st Cong. (1990) (enacted), considered and reported out of committee, H.R. Rep. No. 101-905, 101st Cong. (1990), debated on the floor, 136 Cong. Rec. H10967 (daily ed. Oct. 22, 1990); 136 Cong. Rec. S16860 (daily ed. Oct. 23, 1990), and eventually passed by both Houses, Pub. L. No. 101-565 (1990), 104 Stat. 2795; and (3) that legislation was then signed by the President, 26 Weekly Comp. Pres. Doc. 1847 (Nov. 15, 1990).

state compact entity formed by New York and New Jersey with the consent of Congress, *see* Act of Aug. 12, 1953, ch. 407, Pub. L. No. 252, 67 Stat. 541 (1953)—to restore him to the pertinent longshoremen's register. In support of that request, the former worker relied on the existence of similar legislation enacted by the compact states, entitling convicted state offenders (such as Malverty) to certain public employment opportunities. 524 N.E.2d at 422.

Like the DRBA Compact, the Waterfront Commission compact requires the consent of both states prior to the imposition of any new terms or conditions upon the compact entity. The parallel New York and New Jersey employment discrimination legislation did not "refer[] to the Waterfront Commission" and contained no "express statement that the Legislature was amending or supplementing the provisions of the 'Compact.'" *Id.* at 422. Accordingly, the New York high court refused to conclude that either state had agreed to subject the Waterfront Commission to the legislation. *Id.* It then held: "That the two States have evinced the same, or similar, public policy regarding employment opportunities for former inmates by enacting similar 'antidiscrimination' laws is *not* sufficient under the express terms of the 'Compact' to render [the compact] properly amended or supplemented such that the Commission would be subject to the provisions of [New York's antidiscrimination laws]." *Id.* (citation omitted; emphasis added). This, of course, is the precise converse of the New Jersey rule.[14]

The clear import of the New York high court decision in *Malverty* has not been lost on the New Jersey Supreme

[14] Other New York state court decisions are to the same effect. *See, e.g., Bailey* v. *Port Auth. of New York & New Jersey*, No. 40149-92 (N.Y. Sup. Ct. May 18, 1994) (rejecting argument that New York Human Rights Law applied to bi-state compact authority based upon the existence of similar legislation in New Jersey, because legislation did not state that it was intended to apply to the authority or to amend the compact), *aff'd*, 627 N.Y.S.2d 921 (N.Y. App. Div. 1995).

Court. In *Eastern Paralyzed Veterans Ass'n* v. *City of Camden*, 545 A.2d 127, 132 (N.J. 1988) (emphasis added), the New Jersey court cited *Malverty* as directly contrary authority, standing for the proposition that "similar public policy of two states does *not* suffice to render one state's legislation applicable to bi-state Commission's employment practices." The court's decision in this case, moreover, is in direct conflict with *Malverty*: under *Malverty*, the fact that New Jersey and Delaware independently passed similar legislation entitling certain public employees to collective bargaining rights would be of no moment because, as all agree, neither state's law is by its terms made applicable to DRBA or indicates that it was intended to alter the terms of the interstate compact. Justice Garibaldi—who embraced and applied the *Malverty* rule—reached precisely that conclusion. App. 19a-20a. This direct conflict in itself warrants plenary review.

b. The Delaware and Pennsylvania courts have similarly refrained from imposing additional duties or obligations upon interstate compact authorities in contravention of existing compact terms and, instead, have required concurrent legislation passed by the compact states plainly stating that it applies to the interstate authority or is in fact intended to amend the compact. *See, e.g., Nardi* v. *Delaware River Port Auth.*, 490 A.2d 949, 950 (Pa. Commw. Ct. 1985) (recognizing that "neither creator state can unilaterally impose additional duties, powers or responsibilities upon the Authority," and refusing to subject interstate compact authority to states' employee disability benefits laws); *Delaware River & Bay Auth.* v. *Carello*, 222 A.2d 794, 799 (Del. Ch. 1966) (recognizing that "[t]he power over Authority employees thus placed in the hands of the Commissioners may not be impaired or diluted by the unilateral action of one member to the compact," and refusing to subject DRBA to state collective bargaining obligation).

The Delaware court ruling in *Carello* was rendered before New Jersey had passed legislation entitling certain of New Jersey's public employees to collective bargaining

rights. Following the enactment of such legislation in 1968, the New Jersey courts were presented with—and rejected—the argument that DRBA was subject to a collective bargaining obligation under that law and the parallel Delaware law, stating: "As we see it, to accomplish th[is] result * * * the States of New Jersey and Delaware must first amend the compact and agree upon the issue whether [DRBA]'s employees may organize and engage in collective negotiations, what procedure should be utilized to implement this result, and where and how it should be accomplished." *Delaware River & Bay Auth.* v. *New Jersey Pub. Employment Relations Comm'n* ("*PERC*"), 270 A.2d 704, 707 (N.J. Super. Ct. App. Div. 1970), *aff'd*, 277 A.2d 880 (N.J. 1971). The New Jersey Supreme Court has since done an about-face, accounting for the contrary result it reached in this case, and placing New Jersey in conflict with each of its neighboring states —New York, Pennsylvania, and Delaware—with which New Jersey has entered into several significant interstate compacts in addition to the Compact creating DRBA. *See infra* at 25-27.[15]

c. The New Jersey rule also conflicts with the rule applied in states beyond the Delaware River Basin region. In *Salmon for All* v. *Department of Fisheries*, 821 P.2d 1211, 1215-16 (Wash. 1992) (en banc), for example, the Washington high court rejected the argument that meetings of the Columbia River Compact—an interstate compact established between Washington and Oregon and approved by Congress, Act of Apr. 8, 1918, ch. 47, Pub. L. No. 123, 40 Stat. 515—were subject to a state open public meetings statute, holding "that interstate compact affairs are only subject to state law if the compact's terms agree so." *See also Klickitat County* v. *State*, 862 P.2d

[15] The New Jersey lower courts are now bound to follow the rule applied in this case. *See, e.g., Textar Painting Corp.* v. *Delaware River Port Auth.*, 686 A.2d 795, 798 (N.J. Super. Ct. Law Div. 1996) (interstate compact authority subject to state law governing bidding of public contracts because New Jersey and Pennsylvania had "substantially similar" laws on this score).

629, 632-633 (Wash. Ct. App. 1993) (rejecting argument that interstate compact authority was subject to state land use requirements). *But see Redbird Eng'g Sales, Inc.* v. *Bi-State Dev. Agency of Missouri-Illinois Metro. Dist.*, 806 S.W.2d 695, 701 (Mo. App. Ct. 1991) (holding that interstate compact agency "may be made subject to complementary or parallel state legislation," and that the defendant compact authority was subject to the public works bond requirement found in "complementary" statutes of the compact states).

The federal courts have also refused to impose upon interstate compact authorities additional state law duties or obligations merely because the compact states have passed similar laws in other contexts. In *Seattle Master Builders Ass'n* v. *Pacific Northwest Electric Power & Conservation Planning Council*, 786 F.2d 1359, 1371 (9th Cir. 1986), *cert. denied*, 479 U.S. 1059 (1987), for example, the Ninth Circuit rejected the argument that a compact agency was subject to the "environmental impact assessment" requirement of the parallel Washington and Montana environmental laws. *See also C.T. Hellmuth & Assocs.* v. *Washington Metro. Area Transit Auth.*, 414 F. Supp. 408, 409-410 (D. Md. 1976) (refusing to subject interstate compact authority to "comparable" state public information laws, because doing so would violate "settled" rule that "one party may not enact legislation which would impose burdens upon the compact absent the concurrence of the other signatories").[16]

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[16] The *C.T. Hellmuth* court squarely rejected the argument—adopted by the New Jersey Supreme Court below—"that the rule [against unilateral imposition of additional obligations upon a compact] is inapplicable where it is claimed the [compact] parties have equivalent legislation." 414 F. Supp. at 409. In doing so, moreover, it dismissed the notion—also embraced by the New Jersey courts—that the existence of such legislation indicates a "tacit agreement" between the states to subject the compact authority to such legislation, as well as the argument "that the existence of comparable legislation eliminates the possibility that one party may impinge upon the others' interests." *Id.* at 409-410.

II. THE QUESTION PRESENTED IS OF OVERRIDING IMPORTANCE TO THE GOVERNANCE AND CONTINUING UTILITY OF NUMEROUS INTERSTATE COMPACTS.

1. This conflict of authority plainly warrants resolution by this Court. The New Jersey Supreme Court ruling has profound implications not only for DRBA but for the numerous other interstate compact authorities within the New Jersey courts' reach. These interstate agencies now face the prospect that the New Jersey courts will unilaterally conclude that they are subject to a host of additional duties or obligations never in fact agreed to by their creator states or approved by Congress; while, until the courts say so, the same interstate agencies must operate in the dark as to what those additional duties or obligations may be. The end result, as Justice Garibaldi observed, is "discord and a destruction of the purposes for which * * * bi-state agencies are formed." App. 20a (internal quotation marks omitted).

2a. The most direct and immediate impact of the New Jersey high court ruling will of course be felt by DRBA. The decision directly interferes with the operation of DRBA in an area of fundamental concern to any employer—labor relations. As the trial court found, imposition of an additional "collective negotiation" duty will "be intrusive to running [DRBA]." *Id.* 49a-50a. This intrusion, moreover, plainly was *not* intended by the creator states. As Justice Garibaldi observed, requiring DRBA to negotiate collectively with its employees contravenes the plain import of Article VII(e) of the Compact—vesting in DRBA the sole authority to establish the terms and conditions of employment—which was designed "to keep matters concerning labor relations and collective negotiations in the hands of the *DRBA*." App. 15a (emphasis added). *See also id.* 19a ("DRBA did not consent to the exercise of single-state jurisdiction in the area of collective negotiations with its employees").[17]

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[17] This Court itself has recognized the important interest of public employers in managing such affairs. *See, e.g., Board of County*

But the impact of the New Jersey Supreme Court decision runs much deeper. The court's ruling disrupts the careful balance struck by the creator states—and embodied in the Compact—to ensure that neither state would be in a position to foist its will on the Authority or the other compact state. To this end, the Compact creates an equal number of commissioners from each state to govern DRBA, Compact art. V; provides that no action may be taken by DRBA unless a certain number of commissioners from each state are present, *id.* art. VI; gives to the governor of each state the authority, in effect, to veto any DRBA action, *id.* art. VI; and prohibits the imposition upon DRBA of "additional duties or obligations * * * without the authorization by the law of both states," *id.* art. VIII. The New Jersey Supreme Court decision, in stark contrast, permits the courts of one state *unilaterally* to impose additional duties or obligations upon DRBA simply by implying them from the general laws or policies of the compact states, leaving DRBA, its commissioners, and the governors of the compact states with little recourse but to seek review of such judicially imposed compact amendments before this Court.

At the same time, the decision creates enormous confusion and uncertainty as to which particular laws apply to interstate authorities such as DRBA. As the New Jersey Supreme Court itself recognized, a "myriad of issues * * * will arise during the course of collective negotiations." App. 14a. Because—as the court also acknowledged—the New Jersey and Delaware laws are "not

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Comm'rs, Wabaunsee County, Kan. v. *Umbehr*, 116 S. Ct. 2342, 2348 (1996) ("[t]he government's interest in achieving its goals as effectively and efficiently as possible is elevated from a relatively subordinate interest when it acts as sovereign to a significant one when it acts as employer.") (internal quotation marks and citation omitted); *EEOC* v. *Wyoming*, 460 U.S. 226, 238 n.11 (1983) ("A State's employment relationship with its workers can, under certain circumstances, be one vehicle for the exercise of its core sovereign functions.").

identical," *id.* 12a, questions inevitably will arise as to which state's law trumps the other's in particular instances. *See id.* at 20a-21a (discussing differences between the New Jersey and Delaware labor laws). The task of picking and choosing among conflicting provisions of so-called "parallel" laws—such as whether New Jersey's or Delaware's rules for determining unfair labor practices govern in a dispute arising from DRBA's refusal to recognize a purported collective bargaining agent, *compare* N.J. Stat. Ann. § 34:13A-5.4 *with* Del. Code Ann. tit. 19, § 1308—does not lend itself to judicially manageable standards. Even if it did, the courts, in the process of "cherry picking" between conflicting provisions, would be forced to disrupt the delicately crafted compromises and policy choices that are part and parcel of the enactment of comprehensive legislative codes, especially in the field of labor law.[18]

All of this has enormous practical consequences for DRBA. As noted, the Authority has more than 400 permanent, full-time employees, operates huge facilities and machinery in Delaware and New Jersey, and undertakes multi-million dollar economic development and construction projects in both states. DRBA now faces the prospect that it will be subjected to any number of additional

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[18] As the federal court observed in *C.T. Hellmuth*, in refusing to imply a duty on the part of the Washington Metropolitan Area Transit Authority ("WMATA")—an interstate compact agency established by Maryland, Virginia, and the District of Columbia with Congress' consent, Act of Nov. 6, 1966, Pub. L. No. 89-774, 80 Stat. 1324—to comply with the similar freedom of information laws of the compact states:

> [T]hese laws reflect considered policy decisions of the respective jurisdictions as to the types of information which should be accessible to the public and the circumstances under which it will be made available. ***Regardless of how similar the laws may be,*** plainly Maryland may not impose its preferences in this regard upon Virginia and the District, for such an imposition, however minimal, is nonetheless an intrusion upon their interests and in derogation of the compact. [414 F. Supp. at 410 (emphasis added).]

laws—including employee benefits laws, public information laws, prevailing wage laws, and public bidding laws —found in the New Jersey and Delaware codes, even though those laws are not by their terms applicable to DRBA and neither the compact states nor Congress have expressed any intent that the laws be applied to interstate agencies. Moreover, the Authority is left guessing what these particular duties and obligations are until the New Jersey courts imply them from time to time in the context of ongoing disputes. And, at the end of the day, DRBA will be subjected to one set of rules by the New Jersey courts, which are willing to imply such obligations from the general laws or policies of the compact states, and another by the Delaware courts, which are not; indeed, the New Jersey and Delaware courts are now split on the fundamental question whether DRBA is subject to a collective bargaining duty. *See supra* at 18-19.

This conflict and confusion—the natural product of the New Jersey unilateral judicial amendment rule—eliminates one of the principal reasons that states form compacts in the first place: to ensure uniformity and predictability of the compact's rules of engagement. As one commentator has observed:

> An interstate compact is the most effective instrumentality for enabling States to meet their responsibilities in a joint enterprise such as the control of a river basin or the operation of a public work. In the first place, it establishes one law for all of the States which are party to the compact. It is not only the law of each of them, but the law of all of them. It is true that uniform statutes in the States could create uniformity. The difficulty is that they could not maintain such uniformity in the sense that a compact can. The history of uniform laws is replete with examples of amendments by State Legislatures or interpretations by state courts that made them non-uniform. *A compact, however, cannot be amended by any party without the consent of all of them.* * * * Thus the compact is clearly the most effective by

> far; and in many senses it may be the only method of coordinating the work of agencies of several States. [Frederick L. Zimmermann, *Intergovernmental Commissions: The Interstate-Federal Approach, in* Frederick L. Zimmermann & Mitchell Wendell, *The Law and Use of Interstate Compacts* 122 (1976) (emphasis added).]

The judicial compact amendment process sanctioned by the New Jersey Supreme Court suffers from the same vice as the "uniform statute": it permits one state acting alone to alter the rules of engagement, as the New Jersey courts did below with respect to DRBA's core employment obligations, and thus undermines rather than advances the objective of uniformity.

b. The importance of this case is multiplied manifold by the fact that it involves the State of New Jersey. From the standpoint of geography, commerce, and demographics, New Jersey lies at the heart of a region of this country that is uniquely suited for interstate compacts. Indeed, New Jersey's natural harbor with New York has been called "the greatest harbor in the United States * * * of vital commercial importance to the whole country." Frankfurter & Landis, *supra,* at 697. On a slightly smaller scale, the Delaware River Basin—connecting New Jersey, New York, Pennsylvania, and Delaware—has for centuries proved to be an invaluable resource for promoting the flow of commerce both into and along the eastern seaboard. *See* Frank P. Grad, *Federal-State Compact: A New Experiment in Co-Operative Federalism,* 63 Colum. L. Rev. 825, 825-829 & n.4 (1963) (discussing "[t]he importance of the Delaware River Basin to the basin states and to the vast metropolitan complex it serves").

It is not surprising to find, then, that New Jersey has entered into a variety of different compacts with its neighboring states to address regional concerns that—because of the vast amount of commerce flowing through this region—are of genuine national import. These include

the Port Authority of New York and New Jersey, an interstate compact authority formed by New Jersey and New York with the consent of Congress to operate transportation facilities within and manage the flow of commerce through New York harbor, *see* S.J. Res. 88, ch. 77, Pub. Res. No. 17, 42 Stat. 174 (1921); the Delaware River Port Authority, an interstate compact authority formed by New Jersey and Pennsylvania with the consent of Congress to promote interstate transportation and trade in the Delaware River Basin area, *see* S.J. Res. 41, ch. 258, Pub. Res. No. 26, 47 Stat. 308 (1932); and the Waterfront Commission of New York Harbor, an interstate compact authority formed by New Jersey and New York with the consent of Congress to combat racketeering and other serious criminal activity in the Port of New York district, *see* Act of Aug. 12, 1953, ch. 407, Pub. L. No. 252, 67 Stat. 541.

Each of these interstate compact agencies is directly impacted by the decision below and, accordingly, has participated in these proceedings in an amicus capacity in support of DRBA. They face the same confusion and uncertainty as does DRBA in attempting to determine what general laws or policies will be applied to them by the New Jersey courts, notwithstanding the terms of their respective compacts prohibiting the unilateral imposition of additional duties or obligations upon them by any single compact state. This is perhaps especially true in the case of the Port Authority of New York and New Jersey, which, this Court has said, "exemplifies both the need for, and the utility of, Compact Clause entities." *Hess*, 513 U.S. at 40. The Port Authority must attempt to carry out its operations in the vitally important New York-New Jersey harbor area despite the directly conflicting decisions of the New Jersey Supreme Court in this case and the New York high court in *Malverty* over whether a bi-state compact authority may be subjected to

additional duties or obligations implied from similar laws or policies of both states.[19]

c. The importance of this case is further magnified by the frequency with which the question presented is certain to recur. Individuals routinely seek to hold interstate compact authorities to general state laws or policies, although—outside of New Jersey—they have been uniformly unsuccessful in such efforts. *See, e.g., Bailey* v. *Port Auth. of New York & New Jersey,* No. 40149-92 (N.Y. Sup. Ct. May 18, 1994) (unsuccessful attempt to subject interstate compact authority to state human rights laws), *aff'd,* 627 N.Y.S.2d 921 (N.Y. App. Div. 1995); *Salmon for All* v. *Department of Fisheries,* 821 P.2d 1211 (Wash. 1992) (same; state open public meetings laws); *Delaware River Port Auth.* v. *Commonwealth,* 585 A.2d 587 (Pa. Commw. Ct. 1991) (same; state ethics commission statute); *Malverty* v. *Waterfront Comm'n of New York Harbor,* 524 N.E.2d 421 (N.Y. 1988) (same; state anti-discrimination in hiring laws); *Seattle Master Builders Ass'n* v. *Pacific Northwest Elec. Power & Conservation Planning Council,* 786 F.2d 1359, 1371 (9th Cir. 1986) (same; state environmental laws); *Nardi* v. *Delaware River Port Auth.,* 490 A.2d 949 (Pa. Commw. Ct. 1985) (same; state employment disability

[19] Congress, in approving the compact establishing the Port Authority, recognized that the "territory in and around the port has become commercially one center or district," and that a "coordinat[ed]" effort on the part of New York and New Jersey to facilitate the movement of commerce "through the port of New York will result in great economies, benefiting the Nation as well as the States of New York and New Jersey." 42 Stat. at 174. Congress further recognized, moreover, that "such result [would] be best accomplished through cooperation of the two States by and through a joint or common agency," *i.e.*, the compact authority. *Id.* By bringing the New Jersey courts into direct conflict with the New York courts on the fundamental question whether additional obligations may be unilaterally imposed upon a bi-state compact authority, the New Jersey Supreme Court decision in this case directly threatens the continued cooperation of these states in pursuing this nationally important mission.

benefits laws); *C.T. Hellmuth & Assocs., Inc.* v. *Washington Metro. Area Transit Auth.*, 414 F. Supp. 408, 409 (D. Md. 1976) (same; state freedom of information laws); *Agesen* v. *Catherwood*, 260 N.E.2d 525 (N.Y. 1970) (same; state prevailing wage laws).

3. This case portends even more unsettling and far-reaching effects for interstate compacts in general as well as the regions they serve. As discussed, particularly in the past century, interstate compacts have flourished as a mechanism for addressing regional concerns, *see* note 8, *supra*, prompting one commentator to observe that "[t]here is no more potentially beneficial clause of the United States Constitution than [the Compact Clause]." *A Question of Federalism*, *supra*, at 19. This Court itself has recognized that compacts "perform high functions in our federalism," *Petty* v. *Tennessee-Missouri Comm'n*, 359 U.S. at 279, and has openly encouraged states to consider "the practical constitutional alternative provided by the Compact Clause," *Sims*, 341 U.S. at 27. *See also id.* (compacts "safeguard[]" "national" as well as "regional interests").[20]

The New Jersey high court ruling threatens the continuing utility of the interstate compact device. As Justice Garibaldi observed, the New Jersey rule will "lead to discord and a destruction of the purposes for which such bi-state agencies are formed." App. 20a (internal quotation marks omitted). *Cf. Tobin* v. *United States*, 306 F.2d 270 (D.C. Cir.) ("the suspicion of even potential impermanency would be damaging to the very concept of interstate compacts"), *cert. denied*, 371 U.S. 902

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[20] In a similar vein, Professor Wigmore observed: "Our forefathers devised a political expedient of profound significance when they inserted § 10 in Article I. One hundred years of national growth have now shown us the utility of it. We ought to use it freely, and thus save ourselves from the dilemma of economic disorder on the one hand and top-heavy federal centralization on the other." John H. Wigmore, *Uniformity of Law—Compacts Between States*, 19 Ill. L. Rev. 479, 479-480 (1925).

(1962). Indeed, the New Jersey rule eliminates the careful balance established by this Court's Compact Clause precedents and the Constitution to ensure that neither state may gain an upper hand in its dealings with the other or the compact authority, creates an uncertain and confusing legal landscape in which compact authorities must attempt to operate, and, as explained next, transforms the Compact Clause into a conflict *generating* rather than avoidance device.

III. THIS COURT SHOULD EXERCISE ITS SPECIAL "FUNCTION AND DUTY" TO RESOLVE INTERSTATE CONTROVERSIES OF THIS NATURE.

As with direct controversies between the states (*see* U.S. Const. art. III, § 2), this Court serves a special role in resolving controversies involving the construction of interstate compacts. As Justice Frankfurter wrote for a unanimous Court in *Sims*, "[a] State cannot be its own ultimate judge in a controversy with a sister State. To determine the nature and scope of obligations as between States, whether they arise through the legislative means of compact or the federal common law governing interstate controversies, is the *function and duty* of the Supreme Court of the Nation." 341 U.S. at 28 (internal quotation marks and citation omitted) (emphasis added).

The New Jersey Supreme Court decision will precipitate additional litigation in the field of interstate compacts, as compact authorities are forced to turn to this Court rather than the state legislatures or Congress as a result of the unilateral action of particular states' courts. Moreover, the decision will spawn direct controversies between the states within this Court's original jurisdiction, 28 U.S.C. § 1251, as states struggle to comply with conflicting rulings concerning the duties and obligations to which their compacts may be subjected. As the trial court below observed, judicial "intru[sion] in this area * * * is rather dangerous" and "raises conflicts * * * between the states," as well as within them. App. 51a. This Court inevitably will be asked by affected states to exercise its constitutional obligation to resolve such controversies.

Because of the direct conflict of authority and overriding importance of the question presented, this case plainly meets the Court's conventional criteria for certiorari. *See* S. Ct. Rule 10(b) & (c). Nevertheless, the fact that this case involves a dispute concerning the construction and governance of an interstate compact—bearing directly on the construction and governance of numerous other interstate compacts in the important New Jersey region, if not beyond—provides another, independently compelling reason to grant the writ. The Court should exercise its special "function and duty" (*Sims*, 341 U.S. at 28) to resolve interstate controversies of this kind, grant the writ, and decide the important question presented.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN G. ROBERTS, JR. *
GREGORY G. GARRE
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5810

O. FRANCIS BIONDI
JON E. ABRAMCZYK
MORRIS, NICHOLS, ARSHT & TUNNELL
1201 North Market Street
P.O. Box 1347
Wilmington, Delaware 19899
(302) 658-9200
Counsel for Petitioner

Of Counsel:
WAYNE J. POSITAN
LUM, DANZIS, DRASCO, POSITAN & KLEINBERG, LLC
103 Eisenhower Parkway
Roseland, N.J. 07068
(201) 403-9000
* Counsel of Record

APPENDICES

APPENDIX A

SUPREME COURT OF NEW JERSEY

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 68, AFL-CIO, D.R.B.A. EMPLOYEES ASSOCIATION a/w INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 68, AFL-CIO, and OLIVER TWIST, JUDITH TWIST, KEVIN BAILEY, MARK P. DESORBO, DAVID R. OAT, DAVID A. CUSICK, JOHN M. BUNTING, A.R. SIMMONS, J. DAVID JOHNSON, ROY S. MACCULLOCH, DANIEL A. SLATER, SR., GERALD H. FOSTER, SR., and DAVID E. BARNETT on behalf of themselves and all other persons similarly situated,

Plaintiffs-Respondents,

v.

THE DELAWARE RIVER AND BAY AUTHORITY,

Defendant-Appellant.

Argued Sept. 10, 1996

Decided Feb. 11, 1997

The opinion of the Court was delivered by

POLLOCK, J.

This appeal raises two issues. The first is whether the New Jersey courts have jurisdiction over a Congressionally-approved interstate ("CAI") compact, specifically the Compact between the states of New Jersey and Delaware creating the Delaware River and Bay Authority (the "DRBA"). If so, the second issue is whether the laws of

New Jersey and Delaware are substantially similar concerning the right of public employees to negotiate collectively.

I.

The DRBA is a bi-state agency created by a compact between New Jersey and Delaware and approved by Congress ("the Compact"). *N.J.S.A.* 32:11E-1; *Del.Code Ann.* tit. 17, § 1701; *Pub.L.* 87-678, 76 *Stat.* 560 (1962). New Jersey and Delaware created the DRBA to advance their economic development and to improve the flow of traffic between the two states. *N.J.S.A.* 32:11E-1. Toward that end, the DRBA operates crossings between the two states including the Delaware Memorial Bridge and the Cape May-Lewes Ferry. *Delaware River and Bay Authority v. Internat'l Org., etc.*, 45 *N.J.* 138, 140, 211 *A.*2d 789 (1965) ("International Org."). Congress approved the DRBA Compact in 1962. Delaware-New Jersey Compact, *Pub.L.* 87-678, 76 *Stat.* 560 (1962). This case concerns the duty of the DRBA to negotiate collectively with its employees.

Among the many powers of the DRBA is the power in Article VII, Section (e) to:

> [A]ppoint, or employ, such other officers, agents, attorneys, engineers and employees as it may require for the performance of its duties and to fix and determine their qualifications, duties, compensation, pensions, terms of office and all other conditions and terms of employment and retention.

When the DRBA hires employees, it provides them with a copy of its Personnel Manual. Article XIV of the Manual states:

> Upon accepting a position . . . with the Authority, an individual becomes a public or governmental employees . . . [i]n this connection, Authority employes have no right to incite, organize, conduct or participate in any strike, slowdown, or impediment to

> work against the Authority . . . and neither does the Authority have the obligation to engage in collective bargaining with its employees or their chosen representative as may be unusual [sic] and legally done in private individual employment.

Although the DRBA refuses to recognize any obligation to bargain collectively with International Union of Operating Engineers, Local 68, AFL-CIO ("Local 68"), it recognizes that its employees may join labor unions. Thus, Article XV of the Manual provides:

> The Authority fully recognizes the right of its employes to join a labor union of their own choosing and to organize, present and make known to the Authority any complaint or grievance which an employee might have in connection with employment. . . .

On August 25, 1993, the D.R.B.A. Employee Association (the "Association"), representing ninety-eight DRBA employees, voted to affiliate with Local 68, a labor organization. On August 7, 1993, Local 68 submitted a written request to the DRBA, seeking recognition as the collective-negotiation representative for those employees previously represented by the Association. The DRBA denied that request. Between July 19 and September 9, 1993, a majority of DRBA employees signed authorization cards designating Local 68 as their exclusive representative. On October 7, 1993, Local 68 requested recognition as the collective-negotiation representative. The DRBA did not respond.

Local 68 then instituted this action. The complaint alleged that the DRBA's refusal to recognize Local 68 as the collective-negotiation representative of certain DRBA employees interfered with the employees' rights under the New Jersey Constitution and the labor laws of New Jersey and Delaware. Finding that it lacked jurisdiction to hear the matter and to grant the requested relief, the Chancery Division dismissed the complaint.

The Appellate Division reversed, holding that the Chancery Division had jurisdiction and that it could grant the requested relief. Essential to that holding was the Appellate Division's conclusion that the labor laws of New Jersey and Delaware were complementary and parallel. We granted certification, 143 *N.J.* 311, 670 *A.*2d 1055 (1996) and now affirm.

II.

Article I, Section 10, Clause 3 of the United States Constitution (the "Compact Clause") empowers states to enter into interstate compacts. *U.S. Const. art.* I, § 10, cl. 3. The Compact Clause provides "[n]o State shall, without the consent of Congress, . . . enter into any Agreement or Compact with another state. . . ." *Ibid.* That language is broad enough to prohibit interstate compacts entered without the consent of Congress. In practice, the clause applies only to those compacts that might alter the political power of the affected states, and thus interfere with the supremacy of the United States. *Cuyler v. Adams*, 449 *U.S.* 433, 440, 101 *S.Ct.* 703, 707, 66 *L.Ed.*2d 641, 649 (1981) (holding Compact Clause does not apply to agreements not "directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States"); *Virginia v. Tennessee*, 148 *U.S.* 503, 519-21, 13 *S.Ct.* 728, 734-35, 37 *L.Ed.* 537, 543 (1893) (distinguishing those compacts not encroaching upon federal power from those that may encroach upon that power).

Through interstate compacts, states can establish bi-state agencies. On receiving the consent of Congress, the agency becomes a creature of the creator states and the federal government. *Hess v. Port Auth. Trans-Hudson Corp.*, 513 *U.S.* 30, 38-39, 115 *S.Ct.* 394, 400, 130 *L.Ed.*2d 245, 255 (1994). Generally speaking, the mission of such an agency is to address "interests or problems

that do not coincide nicely either with the national boundaries or with State lines [or] . . . interests that may be badly served or not served at all by the ordinary channels of National or State political action." *Ibid.*

Once sanctioned by Congress, a compact becomes a "law of the Union." *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 54 *U.S.* (13 *How.*) 518, 566, 14 *L.Ed.* 249, 269 (1851). "Because congressional consent transforms an interstate compact within [the Compact Clause] into a law of the United States, . . . the construction of an interstate agreement sanctioned by Congress under the Compact Clause presents a federal question." *Cuyler, supra*, 449 *U.S.* at 438, 101 *S.Ct.* at 707, 66 *L.Ed.*2d at 648. *Accord Carchman v. Nash*, 473 *U.S.* 716, 719, 105 *S.Ct.* 3401, 3403, 87 *L.Ed.*2d 516, 520 (1985). Thus, the consent of Congress transforms the States' agreement into federal law under the Compact Clause. *Cuyler, supra*, 449 *U.S.* at 440, 101 *S.Ct.* at 708, 66 *L.Ed.*2d at 649.

The DRBA argues that its Compact is a federal law and that only federal courts have jurisdiction to construe the compact. We must first determine therefore whether the DRBA Compact is a federal law. If so, the next question is whether compacts deemed federal laws are subject to the jurisdiction only of the federal courts or to the concurrent jurisdiction of state courts.

One of the primary goals of the Compact is to improve the flow of traffic between Delaware and New Jersey. *N.J.S.A.* 32:11E-1. Congress's interest in regulating interstate commerce renders the subject matter of the Compact appropriate for congressional legislation. *U.S. Const. art.* I, § 8, cl. 3. Thus, the DRBA qualifies as a "congressionally sanctioned interstate compact the interpretation of which presents a question of federal law." *Cuyler, supra*, 449 *U.S.* at 442, 101 *S.Ct.* at 709.

We recognize that the United States Supreme Court has original and exclusive jurisdiction in controversies between

two or more states. 28 *U.S.C.A.* § 1251(a). *See Kansas v. Colorado*, 514 *U.S.* 675, 115 *S.Ct.* 1733, 131 *L.Ed.*2d 759 (1995) (invoking original jurisdiction over suit filed by one state against another relating to terms of CAI compact); *Texas v. New Mexico*, 462 *U.S.* 554, 103 *S.Ct.* 2558, 77 *L.Ed.*2d 1 (1983) (same); *Guarini v. New York*, 215 *N.J.Super.* 426, 521 *A.2d* 1362 (Ch.Div.) *aff'd* 215 *N.J.Super.* 293, 521 *A.2d* 1294 (App.Div.1986) *cert. denied*, 484 *U.S.* 817, 108 *S.Ct.* 71, 98 *L.Ed.*2d 34 (1987) (refusing to assume jurisdiction over suit between two states, concluding that case was for exercise of original and exclusive jurisdiction by United States Supreme Court). Absent a controversy between two states or an express provision in a federal statute excluding concurrent jurisdiction, however, state courts may exercise jurisdiction over cases arising under federal law. *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 *U.S.* 473, 477, 101 *S.Ct.* 2870, 2875, 69 *L.Ed.*2d 784, 791 (1981); *Charles Dowd Box Co. v. Courtney*, 368 *U.S.* 502, 507-08, 82 *S.Ct.* 519, 523, 7 *L.Ed.*2d 483, 487 (1962). Nothing in the "federal system prevents state courts from enforcing rights created by federal law." *Courtney, supra*, 368 *U.S.* at 507, 82 *S.Ct.* at 522, 7 *L.Ed.*2d at 487.

For years, moreover, both federal and state courts have construed the terms of interstate compacts. *See e.g., NYSA-ILA Vacation & Holiday Fund v. Waterfront Comm'n of New York Harbor*, 732 *F.*2d 292, 298 (2d Cir.), *cert. denied*, 469 *U.S.* 852, 105 *S.Ct.* 175, 83 *L.Ed.*2d 109 (1984) (holding congressional approval of Waterfront Commission Compact transformed it into federal law); *Utah Int'l Inc. v. Intake Water Co.*, 484 *F.Supp.* 36, 42-43 (D.Mont.1979) (rejecting argument that federal jurisdiction over CAI compact construction cases is exclusive); *Eastern Paralyzed Veterans Ass'n, Inc. v. City of Camden*, 111 *N.J.* 389, 545 *A.*2d 127 (1988). At no time has the United States Supreme Court ruled that state courts do not have jurisdiction to construe CAI com-

pacts. Implicitly recognizing the powers of state courts, the Court has written that it has the final say in compact-construction cases even when the matter concerns a question on which a state court has already spoken. *Petty v. Tennessee-Missouri Bridge Comm'n,* 359 *U.S.* 275, 278-79 n. 4, 79 *S.Ct.* 785, 788 n. 4, 3 *L.Ed.*2d 804, 808 n. 4 (1959). On occasion, the Court has even remanded a compact-construction case to a state court for reconsideration. *State ex rel. Dyer et. al. v. Sims,* 341 *U.S.* 22, 32, 71 *S.Ct.* 557, 562-563, 95 *L.Ed.* 713 (1951) (holding West Virginia's obligation under multi-state anti-pollution compact did not conflict with state constitution, and remanding case to state court).

In *Hess, supra,* moreover, the United States Supreme Court recognized that bi-state agencies are creatures of both the creator states and the federal government. 513 *U.S.* at 38-39, 115 *S.Ct.* at 400. The Court held that a federal court suit is "not an affront to the Compact Clause entity." *Id.* at 41, 115 *S.Ct.* at 401. It follows that a state-court action likewise does not affront a bi-state agency.

This case presents a controversy between the DRBA and its employees, not one between two states. The case, therefore, does not invite the United States Supreme Court to exercise its original and exclusive jurisdiction. No express statutory provision prohibits the courts of Delaware or New Jersey from exercising jurisdiction over the DRBA. Unless a case involves a dispute between two states or an express statutory prohibition against the exercise of jurisdiction by the courts of either state, those courts may construe compacts concerning bistate agencies.

III.

When a state signs a compact, a court of that state may not construe the compact absent the Compact's recognition of that state's jurisdiction. *Ampro Fisheries, Inc. v.*

Yaskin, 127 *N.J.* 602, 610, 606 *A.*2d 1099 (1992), *cert. denied*, 506 *U.S.* 954, 113 *S.Ct.* 409, 121 *L.Ed.*2d 333 (1992). Whether a creator state unilaterally may exercise jurisdiction over a bi-state agency depends, then, on the terms of the compact. *Oklahoma v. New Mexico*, 501 *U.S.* 221, 235 n. 5, 111 *S.Ct.* 2881, 2289 n. 5, 115 *L.Ed.*2d 207, 225 n. 5 (1991); *Texas, supra*, 482 *U.S.* at 128, 107 *S.Ct.* at 2283, 96 *L.Ed.*2d at 114 (1987).

Here, the Compact provides, in pertinent part:

> Judicial proceedings to review any . . . action of the authority . . ., may be brought in such court of each state, and pursuant to such law or rules thereof, as a similar proceeding with respect to any agency of such state might be brought. *N.J.S.A.* 32:11E-1, art. XV.

Thus, the Compact's plain language makes clear that the courts of New Jersey and Delaware have concurrent jurisdiction to review any action taken by the DRBA.

Over the last thirty years, the New Jersey courts have resolved many disputes, including labor disputes involving the DRBA. *See International Org., supra*, 45 *N.J.* 138, 211 *A.*2d 789 (affirming lower court's order enjoining DRBA employees and their union representatives from striking or otherwise picketing); *Delaware River & Bay Authority v. New Jersey Pub. Employment Relations Comm'n*, ("PERC"), 112 *N.J.Super.* 160, 270 *A.*2d 704 (App.Div.1970) (denying PERC's authority to order DRBA to collectively negotiate with union absent compact provision conferring such jurisdiction; pending case in Delaware court voluntarily stayed pending outcome of New Jersey Appeal); *aff'd*, 58 *N.J.* 388, 277 *A.*2d 880 (1971); *Gauntt Constr. Co./Lott Electric Co. v. Delaware River & Bay Auth.*, 241 *N.J.Super.* 310, 314-315, 575 *A.*2d 13 (App.Div.1990) (acknowledging that Article XV of the Compact provides courts of Delaware and

New Jersey with concurrent jurisdiction to hear claims involving the DRBA). We see no reason to reach a different result in the present case. Hence, we conclude that Article XV vests the courts of New Jersey and Delaware with concurrent juridsiction over the DRBA's labor disputes.

IV.

The next question is whether the Courts of New Jersey may grant the relief that Local 68 seeks, including issuance of an order requiring, among other things, that the DRBA recognize Local 68 as the collective-negotiation representative for employees that the Association previously had represented. A single state may not unilaterally impose additional duties on a bi-state agency. *Eastern, supra,* 111 *N.J.* at 398, 545 *A.*2d 127; *Bell, supra,* 83 *N.J.* at 424, 416 *A.*2d 829; *PERC, supra,* 112 *N.J.Super.* at 165-66, 270 *A.*2d 704. For example, DRBA employees do not have the right to strike, absent express approval by the New Jersey and Delaware legislatures. *International Org., supra,* 45 *N.J.* at 148, 211 *A.*2d 789. A legislative grant to public employees of full collective-negotiation rights, including the right to strike, "must be deliberately expressed and is not to be implied." *Id.* at 148, 211 *A.*2d 789.

Consistent with that premise, the Public Employees Relations Commission does not have jurisdiction to certify a union as the exclusive negotiating representative for DRBA employees. *PERC, supra,* 112 *N.J.Super.* at 166, 270 *A.*2d 704. Such jurisdiction "must be expressly given to [the Public Employees Relations Commission] by the Legislatures of New Jersey and Delaware, and not inferred by the courts." *Id.* at 165, 270 *A.*2d 704.

Consequently, we have declined to subject the Delaware River and Port Authority ("DRPA") to the requirements of New Jersey's Tort Claims Act ("Act"). *Bell, supra,* 83 *N.J.* at 425, 416 *A.*2d 829. A contrary result would

have granted the New Jersey Legislature power it did not possess, specifically, "the power to modify by unilateral action the waiver of sovereign immunity set forth in the bi-state compact." *Id.* at 424, 416 *A.*2d 829.

More recently, we have construed the DRPA compact to mean that substantially similar statutes adopted by Delaware and New Jersey could constitute complementary legislation. *Eastern, supra,* 111 *N.J.* at 400, 545 *A.*2d 127. For example, in *Eastern,* the issue was whether New Jersey's Law Against Discrimination ("LAD") *N.J.S.A.* 10:5.1 to -42, as well as its construction laws concerning handicapped access *N.J.S.A.* 52:32-5, applied to the DRPA. *Eastern, supra,* 111 *N.J.* at 395-96, 545 *A.*2d 127. We concluded that the New Jersey laws did not apply because "neither creator state [may] unilaterally impose additional duties, powers, or responsibilities upon the Authority," *Id.* at 398, 545 *A.*2d 127. To yield a more "just resolution" of the dispute, however, we remanded the matter to the Law Division to consider whether New Jersey and Delaware had jurisdiction based on complementary legislation within both states and implied consent. *Id.* at 400-01, 545 *A.*2d 127.

A bi-state agency, although subject to unilateral jurisdiction of a single creator state only when the compact recognizes the state's jurisdiction, "may be subject to complementary or parallel state legislation that does not intrude on the mission of the agency." *Ampro, supra,* 127 *N.J.* at 610, 606 *A.*2d 1099. Although a single state may not unilaterally impose its will on a bi-state agency, the creator states together may subject the agency to complementary or parallel state legislation. *Eastern, supra,* 111 *N.J.* at 400-01, 545 *A.*2d 127. Separate legislative acts are complementary or parallel if they are substantially similar in nature. *Id.* at 401, 545 *A.*2d 127. Legislation is substantially similar if the creator states evidence some showing of agreement in the laws involving and regulating a bi-state agency. *Id.* at 402, 545 *A.*2d 127. If the crea-

tor states do not enact complementary or parallel legislation, a court must make additional findings before concluding that the bi-state agency impliedly consented to regulation by one creator state. *Ibid.* Thus, a bi-state agency consents to a single creator state's exercise of jurisdiction when the agency either voluntarily cooperates with the creator state in the exercise of jurisdiction or agrees to meet the requirements of the law of that state. *Ibid.*

In *Bunk v. Port Auth. of New York & New Jersey*, 144 *N.J.* 176, 180, 676 *A.*2d 118 (1996), the issue was whether a Port Authority of New York and New Jersey ("PANN") worker was entitled to receive workers' compensation benefits under the same limitations as apply to other public employees in New Jersey. Resolving that issue required the determination whether the provisions of New York and New Jersey for awarding workers' compensation benefits were parallel and complementary. *Id.* at 185, 676 A.2d 118. Rather than "decide the exact contours of New York law," we observed that there was "evidence in the record, . . . that the provisions [were] somewhat similar." *Ibid.* Thus, we held that New Jersey could impose its workers' compensation laws on PANN to limit workers' compensation benefits of a public employee receiving a disability pension under New York law for the same injury. *Id.* at 180, 676 *A.*2d 118.

The Delaware courts follow a similar practice. In *Delaware River and Bay Auth. v. Carello*, 43 *Del.Ch.* 213, 222 *A.*2d 794 (1966), the Delaware Chancery Court interpreted Article VII(e) of the DRBA compact. *Carello* arose in 1966, two years before the New Jersey Legislature passed public employment legislation. Consequently, the Delaware court held that Delaware could not "unilaterally legislate so as to place burdens on the compact." *Id.* 222 *A.*2d at 798-99. The court continued, however, that the Delaware statute would "remain ineffective until concurrent legislative action of a similar nature is taken by the state of New Jersey." *Id.* at 799. The amendment of *N.J.S.A.* 34:13A-1 to -29, constitutes concurrent legis-

lative action. Finally, Article VIII of the Compact recognizes that the DRBA may be subject to obligations other than those that the Compact specifies. Article VIII provides that the DRBA shall not undertake additional duties and obligations "under the law of either State or Congress without authorization by the law of both States." Implicit in that provision is the premise that the two states may subject the DRBA to complementary or parallel legislation.

From the foregoing, we conclude that a bi-state agency, such as the DRBA, is subject to the law of New Jersey when the agency's compact expressly provides for unilateral action, both states have adopted complementary or parallel legislation, or the agency has impliedly consented to the exercise of single-state jurisdiction.

V.

The final issue is whether the laws of New Jersey and Delaware are complementary and parallel with regard to collective negotiations for public employees. Both states have enacted laws to prevent labor disputes between public employees, thereby assuring the orderly and uninterrupted operations of public employers. *N.J.S.A.* 34:13A-2; *Del.Code Ann.* tit. 19, § 1302. Both states grant public employees the right to join labor unions and to negotiate collectively through a representative of their own choosing. *N.J.S.A.* 34:13A-5.3; *Del.Code Ann.* tit. 19, § 1303. Finally, both states prohibit public employers from interfering with employees in the exercise of their rights and from refusing to negotiate in good faith with the employees' majority representative. *N.J.S.A.* 34:13A-5.4; *Del.Code Ann.* tit. 19, § 1307. The labor laws of New Jersey and Delaware, although not identical, are complementary and parallel. As a matter of public policy, the legislatures of both states have concluded that public employees should have the right of collective negotiation and that employers should not interfere with that right. In effect, the legislatures have modified the Compact. That

modification should not interfere with the DRBA's mission of advancing the economic development of the two states and improving the flow of traffic between them.

The dissent would deny DRBA employees the right of collective negotiation that the New Jersey and Delaware legislatures have conferred on all public employees. In denying that right, the dissent misperceives judicial recognition of the legislative enactments in both New Jersey and Delaware as an attempt by the judiciary to amend the compact contrary to the will of the legislature. (*Post* at 448, 688 *A*.2d at 576). Contrary to the dissent, we merely recognize that the New Jersey and Delaware legislatures have adopted a substantially similar policy concerning collective negotiations by public employees. Anomalous indeed would be the failure to apply so important a policy to an entity created by both states for their mutual benefit. Unlike the dissent, moreover, we do not believe that recognizing the right of DRBA employees to negotiate collectively will " 'lead to discord and a destruction of the purposes for which such bi-state agencies are formed.' " (*Post* at 454, 688 *A*.2d at 579) (quoting *PERC*, *supra*, 112 *N.J.Super.* at 166, 270 *A*.2d 704.)

Nor do we share the dissent's lack of confidence in the ability of the Chancery Division to interpret labor law. (*Post* at 454-55, 688 *A*.2d at 579-80). Historically, courts have exercised equitable power to resolve labor disputes. *See e.g., Local No. 11 of Internat'l Ass'n of Bridge, Structural & Ornamental Ironworkers v. McKee*, 114 *N.J.Eq.* 555, 169 *A*. 351 (Ch.Ct.1933) (appointing receiver to manage union's business until members could elect new officers); *Fryns v. Fair Lawn Fur Dressing Co.*, 114 *N.J.Eq.* 462, 168 *A*. 862 (Ch.Ct.1933) (holding Chancery Court had jurisdiction and that employer could not force employees to join a particular union). Even today, courts interpret labor law. *See* Douglas L. Leslie, ed., *The Railway Labor Act* 7 (BNA Books 1995) (describing courts as "gatekeepers" that define a labor dispute to determine whether to exercise jurisdiction, compel arbitra-

tion, or direct the union to the National Mediation Board). At some time, the New Jersey and Delaware legislatures may adopt legislation designating an agency to resolve "the myriad of issues that will arise during the course of collective negotiations." *Ibid.* Until such time as the legislatures make such a designation, however, the absence of such legislation does not deprive the Chancery Division of jurisdiction.

The judgment of the Appellate Division is affirmed, and the matter is remanded to the Chancery Division.

GARIBALDI, J., dissenting.

The Court has done what the Legislatures of New Jersey and Delaware have not—amend the congressionally-approved Interstate Compact (the Compact) between Delaware and New Jersey to require the Delaware River and Bay Authority (the DRBA) to negotiate collectively with its employees. I believe that the Court does not have the power to amend the Compact unilaterally or to impose additional duties and obligations, arising under New Jersey law, on the DRBA without Delaware's consent.

The majority finds that New Jersey has the power to amend Articles VII(e) and VIII of the Compact because the labor laws of New Jersey and Delaware, although not identical, are complementary or parallel with regard to collective negotiations for public employees. Although in some situations an agency may be subject to complementary or parallel legislation when the issue is limited to interpreting a state law or a state regulation, such legislation cannot and should not be used to repeal the Compact. Such a result comes from an unwarranted expansion of the *dicta* in *Eastern Paralyzed Veterans Association, Inc. v. City of Camden*, 111 *N.J.* 389, 545 *A.*2d 127 (1988), and will lead to confusion, uncertainty, and conflicts when the Superior Court, Chancery Division of New Jersey, attempts to decide how the differing labor laws of New Jersey and Delaware, as expressed in their parallel labor legislation, are to be effectuated.

I

The Court's ruling directly contravenes Article VII(e) of the Compact, giving the DRBA the power to

> [a]ppoint, or employ, such other officers, agents, attorneys, engineers and employees as it may require for the performance of its duties and to fix and determine their qualifications, duties, compensation, pensions, terms of office *and all other conditions and terms of employment and retention.*
>
> [*N.J.S.A.* 32:11E-1, art. VII(e) (emphasis added).]

That provision is intended to keep matters concerning labor relations and collective negotiations in the hands of the DRBA.

The Court's opinion also directly contravenes Article VIII of the Compact that establishes additional powers that may be granted to the DRBA but limits the duties that may be imposed on it. That Article provides:

> For the purpose of effectuating the authorized purposes of the authority, additional powers may be granted to the authority by legislation of either State without concurrence of the other, and may be exercised within such State; or may be granted to the authority by Congress and exercised by it; but *no additional duties or obligations shall be undertaken by the authority under the law of either State or of Congress without authorization by the law of both States.*
>
> [*N.J.S.A.* 32:11E-1, art. VIII (emphasis added).]

Requiring the DRBA to negotiate collectively with its employees most certainly will impose "additional duties or obligations" on it.

II

Unless both states agree, it is well-established that a single-creator state may not unilaterally impose additional duties upon a bi-state agency when to do so would contravene the terms of the Compact. *Eastern, supra*, 111 *N.J.* at 398, 545 *A.*2d 127; *Bell v. Bell*, 83 *N.J.* 417, 424, 416 *A.*2d 829 (1980); *Delaware River & Bay Auth. v. New Jersey PERC*, 112 *N.J.Super.* 160, 165-66, 270 *A.*2d 704 (App.Div.1970) (*PERC*), *aff'd o.b.*, 58 *N.J.* 388, 277 *A.*2d 880 (1971). That principle was addressed by the Appellate Division in *PERC, supra*, a case also concerning labor relations of the DRBA. 112 *N.J.Super.* at 165, 270 *A.*2d 704. There, the court was asked to determine whether New Jersey's Public Employment Relations Commission (PERC) had jurisdiction to certify a union as the exclusive bargaining representatives for certain DRBA employees. *Id.* at 163, 270 *A.*2d 704. Holding that PERC did not have jurisdiction, the panel stated that such jurisdiction "*must be expressly given to* [PERC] by the Legislatures of New Jersey and Delaware, and *not inferred by the courts.*" *Ibid.* (emphasis added). To hold otherwise, the panel explained, would authorize one creator-state to impose its will and policies over the other state contrary to the terms of the Compact. *Ibid.* The court noted that under Article VIII of the Compact, the DRBA's powers were to be jointly controlled by both creator-states. *Id.* at 164, 270 A.2d 704.

The court further explained that because a bi-state agency is a single agency of the governments of both creator-states, neither creator-state may enact laws involving and regulating the agency unless both states agree. *Id.* at 165-66, 270 A.2d 704; *see also Bell, supra*, 83 *N.J.* at 424, 416 *A.*2d 829 ("[T]he New Jersey Legislature does not have the power to modify by unilateral action the waiver of sovereign immunity set forth in the bi-state compact; yet that would be the result were the Tort Claims Act held to apply to the DRPA."); *Gauntt Constr. Co./*

Lott Electric Co. v. Delaware River & Bay Auth., 241 *N.J.Super.* 310, 575 *A.*2d 13 (App.Div. 1990) (rejecting contention that public policy of both compacting states imposed duties on bi-state agency).

A careful reading of *Eastern, supra*, 111 *N.J.* at 389, 545 *A.*2d 127, discloses that the majority has expanded the scope of that decision. In *Eastern* we only decided whether the New Jersey Law Against Discrimination, *N.J.S.A.* 10:5-1 to -42, the New Jersey Uniform Construction Code Act, *N.J.S.A.* 52:27D-119 to -141, and the New Jersey Handicapped Access Law, *N.J.S.A.* 52:32-42 to -16 applied to the Delaware River Port Authority (DRPA). We concluded that New Jersey laws could not be applied because the DRPA was a public corporate-instrumentality of both New Jersey and Pennsylvania. Hence, "neither creator state [may] unilaterally impose additional duties, powers, or responsibilities upon the Authority." *Id.* at 398, 545 *A.*2d 127. Additionally, the Court, citing *Bell*, concluded that New Jersey may not unilaterally exercise jurisdiction over the DRPA because to do so would violate the Compact, which made no provision for such jurisdiction. *Ibid.*

In *Eastern*, we also found that the DRPA's Compact did "not contemplate single-state jurisdiction in general." *Id.* at 400, 545 *A.*2d 127. The Court observed that "when Pennsylvania and New Jersey intended that local law would govern an area relevant to their compact, such as acquisition by eminent domain, *N.J.S.A.* 32:3-13.51, or consent for highway connection to the bi-state toll bridge, *N.J.S.A.* 32:3-13.55, they so specified." *Id.* at 401-02, 545 *A.*2d 127.

In addressing the Eastern Paralyzed Veterans Association's contention that the public policy of New Jersey mandated that the DRPA install elevators at its transit facility in Camden, the Court stated:

> This State lacks the sovereign authority to direct the DRPA to cede jurisdiction to New Jersey. . . . [S]o

too a single state cannot dictate the policy of a bi-state agency.

[*Id.* at 407, 545 *A*.2d 127 (citations omitted).]

Accordingly, the Court held that the State of New Jersey could not exercise unilateral jurisdiction over the DRPA, stating that compacting states may only be subjected to single-state jurisdiction when the compact itself recognizes such jurisdiction. *Id.* at 399, 545 *A*.2d 127. The DRPA's Compact, the Court made clear, did not contemplate that form of unilateral state jurisdiction. *Id.* at 400, 545 *A*.2d 127.

Remanding the matter to the trial court, the Court, in *dicta*, suggested, however, that "the theories of complementary regulations and implied consent, given a fuller exposition, may yield a just resolution of the dispute." *Id.* at 400-01, 545 *A*.2d 127. To succeed under that fact-sensitive, complementary-legislative theory, the Court stated, there must be "*some showing of agreement*" by the creator states to the enforcement of laws involving and regulating a bi-state agency. *Id.* at 402, 545 *A*.2d 127 (emphasis added). The best illustration of parallelism, the Court pointed out, is that DRPA employees are required to observe stop lights in New Jersey just as they are required to do so in Pennsylvania, even though neither state adopted such regulations within the framework of the compact creating the bi-state agency. *Id.* at 400, 545 *A*.2d 127 (citing *Nardi v. Delaware River Port Auth.*, 88 *Pa. Cmwlth.* 558, 490 *A*.2d 949, 952 n. 10 (1985)). That example indicates the type of uncomplicated situation that complementary laws were capable of addressing.

In *Ampro Fisheries, Inc. v. Yaskin*, 127 *N.J.* 602, 606 *A*.2d 1099 (1992); *cert. denied*, 506 *U.S.* 954, 113 *S.Ct.* 409, 121 *L. Ed.*2d 333 (1992), and *Bunk v. Port Authority of New York & New Jersey*, 114 *N.J.* 176, 676 *A*.2d 118 (1996), the facts were much different from those in this case. In those cases, the Court did not amend

the language of the Compact. In this case, however, Article VII(e), giving the Authority exclusive control over conditions and terms of employment, and Article VIII, providing that no state shall impose additional duties on another state without its consent, are, in effect, being directly overruled.

The Compact does not expressly give the compacting states the power to impose their labor laws on the DRBA, and the DRBA did not consent to the exercise of single-state jurisdiction in the area of collective negotiations with its employees. In fact, the evidence is to the contrary. That policy is confirmed by Article XIV of the DRBA's Personnel Manual (the Manual), which provides:

> Upon accepting a position . . . with the Authority, an individual becomes a public or governmental employee. . . . In this connection, Authority employees have no right to incite, organize, conduct or participate in any strike, slowdown, or impediment to work against the Authority . . . and *neither does the Authority have the obligation to engage in collective bargaining with its employees or their chosen representative as may be unusual* [*sic*] *and legally done in private individual employment.*
>
> [Emphasis added.]

In view of the language of Article VII(e) and VIII of the Compact, something more than mere complementary or parallel statutes is needed to repeal specific language in the Compact, or stated differently, to act as an implied repeal of the Compact's language. Similar public policy in two states is not sufficient to render one state's legislation applicable to a bi-state agency's employment practice. *Malverty v. Waterfront Comm'n of N.Y. Harbor*, 71 *N.Y.*2d 977, 529 *N.Y.S.*2d 67, 524 *N.E.*2d 421 (1988).

Permitting similar legislative acts of compacting states to amend a compact completely disregards the long-standing precedents requiring legislatures to agree expressly before a state can impose duties and obligations

on a bi-state agency. The majority's reasoning ignores the fact that when the Legislatures of New Jersey and Delaware sought to impose unilaterally-enacted state legislation on their bi-state agency, they expressly provided for it in the Compact. *Eastern, supra*, 111 *N.J.* at 401-02, 545 *A.*2d 127; *see also N.J.S.A.* 32:11E-1, Article XXII (imposing obligation on DRBA to comply with unilaterally-enacted environmental protection laws when planning, developing, constructing, or operating certain projects). The lack of a similar provision imposing unilaterally-enacted employment or labor laws on the DRBA must be viewed as an intent that such laws not apply.

III

Moreover, as explained in *PERC, supra*, 112 *N.J.Super.* at 166, 270 *A.*2d 704, "[t]o sanction such practice would lead to discord and a destruction of the purposes for which such bi-state agencies are formed." The panel made it clear that to impose New Jersey's labor policies on Delaware and its citizens, who are employed by the DRBA, would require that

> [t]he States of New Jersey and Delaware . . . *amend the compact and agree upon the issue* of whether [the DRBA's] employees may organize and engage in collective negotiations, what procedure should be utilized to implement this result, and where and how it should be accomplished. Unless, such is done, Delaware and New Jersey could each claim jurisdiction since both states have legislation permitting public employees to organize and negotiate. The confusion and conflicts which would follow if one state assumed jurisdiction, makes it clear that such was never intended by the compact.
>
> [*Id.* at 166, 270 *A.*2d 704 (emphasis added).]

The same problem will result from the majority's remand to the Chancery Division to effectuate the implementation of the two laws. Although the labor laws of New Jersey and Delaware are based on similar public

policies, they differ in the following manner: (1) each States' statute describes a different procedure for determining the employee-bargaining unit (*N.J.S.A.* 34:13A-5.3; *Del.Code Ann.* tit. 19, § 1310); (2) the provisions for determining unfair labor practices and enforcing the statutes are different (*N.J.S.A.* 34:13A-5.4; *Del Code Ann.* tit. 19, § 1308); (3) the New Jersey statute provides for arbitration of disputes whereas the Delaware statute does not (*N.J.S.A.* 34:13A-7); and (4) neither statute indicates in its declaration or purpose that it intended for the statute to apply to the DRBA.

Inevitably, the Court's decision will create uncertainty as to which state's law and administrative procedures apply to a given situation. Rather than acting as a court, the Chancery Division will be acting as an administrative agency interpreting labor law; a role for which the Chancery Court was not intended and for which it is not well suited.

IV

In conclusion, I find that complementary or parallel state laws cannot repeal the language of the Compact. The Legislatures of both States could readily enact concurrent legislation requiring the DRBA to enter into collective negotiations with its employees thereby designating an entity more appropriate than the Chancery Division to decide the myriad of issues that will arise during the course of collective negotiations. They did not, however, choose to follow such a course. As such, the courts of New Jersey lack the authority to unilaterally grant such power.

I would reverse the judgment of the Appellate Division.

For affirmance and remandment—Chief Justice PORITZ, and Justices HANDLER, POLLOCK, O'HERN, STEIN and COLEMAN—6.

For reversal—Justice GARIBALDI—1.

APPENDIX B

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

A-2228-93T1

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 68, AFL-CIO, D.R.E.A. EMPLOYEES ASSOCIATION a/w INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 68, AFL-CIO, and OLIVER TWIST, JUDITH TWIST, KEVIN BAILEY, MARK P. DESORBO, DAVID R. OAT, DAVID A. CUSICK, JOHN M. BUNTING, A.R. SIMMONS, J. DAVID JOHNSON, ROY S. MACCULLOCH, DANIEL A. SLATER, SR., GERALD H. FOSTER, SR., and DAVID E. BARNETT on behalf of themselves and all other persons similarly situated,

Plaintiffs-Appellants,

v.

THE DELAWARE RIVER AND BAY AUTHORITY,

Defendant-Respondent.

Argued February 22, 1995—Decided Aug. 2, 1995

Before Judges Long, A.M. Stein and P.G. Levy

On Appeal from Superior Court, Chancery Division, Cape May County

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PER CURIAM

Defendant Delaware River and Bay Authority (DRBA), which operates the Delaware Memorial Bridge and the Cape May-Lewes Ferry, was established in 1962 by the

Delaware-New Jersey Compact which was approved by Congress. Pub. L. No. 87-678, 76 Stat. 560 (Supp. 1990); *N.J.S.A.* 32:11E-1 to -12, *Del. Code Ann.* tit. 17, § 1701 (1985 & Supp. 1994).

Plaintiff DRBA Employees Association (Association) is on organization of employees of DRBA's Marine Division, affiliated with plaintiff International Union of Operating Engineers, Local 68. The individual plaintiffs are all members and employees of DRBA. On August 30, 1993, plaintiffs requested recognition of Local 68 as the representative of the employees who had so designated it and advised that the local would seek to schedule meetings to discuss 'grievances and proposals concerning terms and conditions of its members' employment."

DRBA's executive director responded, noting that only "36 of the Authority's 121 permanent employees at the Cape May-Lewes Ferry have designated the Association as their representative." While reiterating DRBA's "commitment to the right of its employees to join a labor union of their own choosing," he declined to recognize any "collective bargaining" agent on behalf of the employees. He concluded that the affiliation process, which was for purposes of collective bargaining, "has no relevance to the employment relationships which currently exist at the Delaware River and Bay Authority."

In October 1993, plaintiffs again wrote to DRBA requesting recognition:

> [A] majority of the marine employees, service and maintenance employees, and office clerical employees employed by the Delaware River and Bay Authority at the Cape May-Lewes Ferry have signed authorization cards authorizing International Union of Operating Engineers, Local 68, AFL-CIO to act as their exclusive representative for purposes of collective negotiations with respect to terms and conditions of employment.

When DRBA did not respond, plaintiffs filed a complaint in the Superior Court, Chancery Division alleging that DRBA's refusal to recognize the local "has interfered with the rights of its employees . . . to organize and present grievances and proposals through representatives of their own choosing" as guaranteed by Article I, Section 19 of the New Jersey State Constitution; the New Jersey Employer-Employee Relations Act, *N.J.S.A.* 34:13A-1 to -29; and the Right of Public Employees to Organize Act, *Del. Code Ann.* tit. 19, §§ 1301 to 1312 (1985 & Supp. 1992), *repealed by* Public Employment Relations Act, 69 Del. Laws c. 466 (1994).

Plaintiffs demanded that DRBA recognize the affiliation and the designation of Local 68; acknowledge the right of its employees to organize for purposes of collective negotiations; hold a secret-ballot election to determine whether Local 68 represented a majority of DRBA's employees within the appropriate bargaining unit, and announce the results of the election. If the majority of DRBA's employees selected Local 68 as their representative, plaintiffs asked that DRBA be required to negotiate in good faith "over terms and conditions of employment, and embody any agreement reached in a written agreement."

On October 18, 1993, the trial judge ordered DRBA to show cause why plaintiffs should not be granted the relief they requested. DRBA answered the complaint, denying its material allegations and moved to dismiss, asserting, among other reasons, a lack of subject matter jurisdiction insofar as neither the statutes of the compact states nor the New Jersey Constitution are applicable to DRBA "without the consent of the other state."

In support of the motion to dismiss, DRBA submitted affidavits from its executive director and an executive assistant explaining that its largest facilities and two-thirds of its 500 employees are located in Delaware. DRBA also argued that Local 68 is not a collective bargaining

agent and has never been recognized as such by plaintiffs. (By October 1993, ninety-two employees had designated the Association as their representative, with nine of them also designating Local 68).

The trial judge dismissed the complaint, citing *Eastern Paralyzed Veterans Ass'n v. City of Camden*, 111 *N.J.* 389 (1988), for the proposition that "New Jersey . . . lacks the sovereign authority to direct the DR[B]A to cede jurisdiction to New Jersey . . . . [A] single state cannot dictate the policy of a bi-state agency." The judge further determined that, even if there was jurisdiction, "I would have to dismiss this matter for lack of relief." A grant to public employees of the right to bargain or negotiate collectively "must be deliberately expressed and is not to be implied." The judge explained that it is not the court, but the "political process" that created the agency and "drives" its day-to-day decision-making, that should "drive the agency to recognize the realities of public employment as it applies in both states." We reverse.

The principles of federal constitutional law that mandate joint control and limit the jurisdiction of state courts over matters involving bi-state agencies like the DRBA are well established. Because each state relinquishes a portion of its sovereignty to enter into an interstate compact, the resulting bi-state agency is established with precisely limited powers over which the states may only exercise joint control. *See United States v. Bekins*, 304 *U.S.* 27, 38 *S.Ct.* 811, 82 *L.Ed.* 1137 (1938); *Delaware River & Bay Auth. v. New Jersey Pub. Employment Relations Comm'n*, 112 *N.J.Super.* 160 (App. Div. 1970), *aff'd*, 58 *N.J.* 388 (1971). "It follows that neither creator state can unilaterally impose additional duties, powers or responsibilities upon the Authority." *Eastern Paralyzed Veterans, supra*, 111 *N.J.* at 398 (quoting *Nardi v. Delaware River Port Auth.*, 490 *A.*2d 949, 950 (Pa. Commw. Ct. 1985)). It was this principle that the trial judge had in mind in declaring that he lacked jurisdiction over the DRBA. What he overlooked was the DRBA compact it-

self, which expressly sets forth the contours of state court jurisdiction. Article XV of the DRBA compact provides:

> Judicial proceedings to review any bylaw, rule, regulation, order or other action of the authority or to determine the meaning or effect thereof, may be brought in such court of each state, and pursuant to such law or rules thereof, as a similar proceeding with respect to any agency of such state might be brought.

By this provision, the DRBA compact ceded concurrent jurisdiction to the courts of New Jersey and Delaware. Either state may exercise such jurisdiction. *See Gauntt Constr. Co. v. Delaware River & Bay Auth.*, 241 *N.J. Super*, 310, 314 (App. Div. 1990). It is this language which eliminated the initial jurisdictional issue over which the trial judge stumbled and which distinguishes this case from *Eastern Paralyzed Veterans, supra*, which he cited. There, no similar compact provision existed. In sum, there is no question but that the trial judge had jurisdiction to determine the viability of plaintiffs' claimed entitlement to representation and collective negotiations arising out of the Delaware and New Jersey statutes.

He also erred in concluding that he lacked the power to grant plaintiffs the right to collectively negotiate because that right was not "deliberately expressed," presumably in the DRBA compact. The compact is not the only source of authority over a bi-state agency. Indeed, the DRBA compact itself recognizes that the DRBA may be subject to obligations beyond its four corners. Article VIII provides: "no additional duties or obligations shall be undertaken by the Authority under the law of either State or of Congress without authorization by the law of both States." This language recognizes that a corollary of the proposition that neither state may individually impose its will on a bi-state agency is that the agency may be made subject to complementary or parallel state legislation. *Eastern Paralyzed Veterans, supra*, 111 *N.J.* at 398;

Nardi, supra, 490 *A*.2d at 951-52. Plaintiffs contend that complementary labor policies, as expressed in parallel legislation in New Jersey and Delaware, require DRBA to recognize the individual plaintiffs' affiliation with a labor organization and to collectively negotiate over the terms and conditions of employment.

This is not the first time this argument has been advanced. In *Delaware River & Bay Authority v. Carello*, 222 *A*.2d 794 (Del. Ch. 1966), defendant union petitioned the Delaware Department of Labor for certification. In enjoining these proceedings at DRBA's behest, the court pointed out that Article VII(e) of the DRBA compact (which is identical to that Article today) grants defendant "the power to fix and determine the qualifications, duties, compensation, terms of office, pensions, and all other conditions and terms of employment of its employees." *Carello, supra*, 222 *A*.2d at 797. Because, at the time of this decision in 1966, the Right of Public Employees to Organize Act, *Del. Code Ann.* tit. 19, §§ 1301 to 1312, (now, the Public Employment Relations Act, *Del. Code. Ann.* tit. 19 §§ 1301 to 1318 (Supp. 1994)) was "not supported by companion legislation in New Jersey," the court held that Delaware could not "unilaterally legislate so as to place burdens on the compact." *Id.* at 798-99. The court concluded that the Delaware statute "must remain ineffective until concurrent legislative action of a similar nature is taken by the State of New Jersey." *Id.* at 799. In 1968, the New Jersey Legislature enacted its version of the Delaware law, the New Jersey Employer-Employee Relations Act, *N.J.S.A.* 34:13A-1 to -29.

To be sure, the two state acts are not identical. However, both clearly give public employees the right to freely organize, to designate a representative to "negotiate in good faith" with the employer with respect to "terms and conditions of employment," and to execute resulting written agreements. *N.J.S.A.* 34:13A-5.3; *Del. Code Ann.* tit. 19, §§ 1301, 1302. Both schemes also prohibit strikes

by public employees. *N.J.S.A.* 34:13A-14; *Del. Code Ann.* tit. 19, § 1316; *see also Board of Educ. v. New Jersey Educ. Ass'n*, 53 *N.J.* 29, 36 (1968); *Franklin Township Bd. of Educ. v. Quakertown Educ. Ass'n*, 274 *N.J. Super.* 47, 54 (App. Div. 1994). DRBA argues that the differences between the acts eliminates their potential characterization as parallel legislation or complementary policies. Plainly, however, the legislation enacted in each compact state need not be identical in order to find that both have the same policy. Complementary and parallel legislation of a "similar" nature will do. *Carello, supra*, 222 *A.*2d at 799. Nor is there any requirement that in order to be applicable to a bi-state agency, the compact states must explicitly agree that the policy will so apply. In *Delaware River & Bay Auth. v. International Org. of Masters, Mates & Pilots*, 45 *N.J.* 138, 147 (1965), for example, our Supreme Court restrained a union from striking based on "the historic and widely prevailing policy against strikes by public employees," which was "equally applicable in both states." The Court did not cite any provision or expression of this policy in either or both states that made it specifically applicable to the DRBA.

Nothing in *Eastern Paralyzed Veterans,* cited by DREA, supports a contrary conclusion. There the Supreme Court addressed an effort by New Jersey to apply its substantive law to a bi-state agency project. *Eastern Paralyzed Veterans, supra,* 111 *N.J.* at 391. The Camden Housing Authority had agreed to construct a mass transit terminal for train service to be operated by the Port Authority Transportation Corporation, a subsidiary of the Delaware River Port Authority (DRPA), a bi-state agency of New Jersey and Pennsylvania. *Ibid.* The New Jersey Department of Community Affairs, which had to approve the construction plans, requested an elevator for the handicapped to satisfy state regulations. *Id.* at 394. Plaintiff, an association of handicapped persons, contended that the elevator was required under the New Jersey Uniform Construction Code Act, *N.J.S.A.* 52:27D-119 to -141, the

Handicapped Access Law, *N.J.S.A.* 52:32-4 to -16, the New Jersey Law Against Discrimination, *N.J.S.A.* 10:5-1 to -42, and by *N.J.S.A.* 52:27D-129b, which states that the Code applies to bi-state agencies. *Id.* at 395. The Supreme Court ultimately determined that New Jersey could not unilaterally impose duties or responsibilities on a bi-state agency unauthorized by the compact without "[s]ome showing of agreement by both states to the enforcement of the Uniform Construction Code at DRPA's New Jersey facilities." *Id.* at 402. DRBA reads this language too broadly and argues that it mandates an express agreement by the compact states as to the applicability of a particular law or policy. Not so. Read in context, it is nothing more than a rejection of the suggestion that by enacting *N.J.S.A.* 52:27D-129b, which purports to apply the construction code to bi-state agencies, New Jersey could take unilateral action toward the DRPA. Certainly, particular state laws and policies apply only by agreement. But that agreement can be either express or implied from "substantially similar legislative acts" in the compact states. *Eastern Paralyzed Veterans, supra,* 111 *N.J.* at 401.

We think that through the enactment of such legislation, New Jersey and Delaware have expressed their agreement that public employees, including DREA's, may organize and designate a representative to engage in collective negotiations on their behalf, excluding the right to strike. Indeed, the enactment of a parallel law by New Jersey was all the Delaware Court said was necessary, as long ago as 1966, to set the labor process urged by plaintiffs in motion. *Carello, supra,* 222 *A.*2d at 799.

DRBA argues that "jurisdictional collisions . . . would result from the inconsistent policies arising out of the implementation of different statutes and regulations by the Delaware Department of Labor and the New Jersey Public Employment Relations Commission (PERC),"

citing various differences between the two statutes. However, plaintiffs are not seeking to actually implement either state's regulatory scheme; they acknowledge correctly that neither the New Jersey PERC nor the Delaware Department of Labor has jurisdiction. *Delaware River & Bay Auth. v. New Jersey Pub. Employment Relations Comm'n*, 112 *N.J. Super.* 160, 165-66 (App. Div. 1970); *Carello, supra*, 222 *A.*2d at 798. Plaintiffs are seeking only to exercise their rights to collective negotiations in accordance with the policy of both states, under the jurisdiction of the Chancery Division, which will supervise labor relations when government agencies that normally do so, have no jurisdiction. *Johnson v. Christ Hosp.*, 45 *N.J.* 108, 112 (1965); *Comite Organizador de Trabajadores Agricolas v. Molinelli*, 114 *N.J.* 87, 89-90 (1989).

We reverse and remand the case to the trial judge to determine how the complementary labor policies of New Jersey and Delaware, as expressed in their parallel labor legislation, are to be effectuated.

Reversed and remanded.

APPENDIX C

[Filed Nov. 19, 1993]

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
CAPE MAY COUNTY

Docket Number: CPM-C-77-93

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 68 AFL-CIO, D.R.B.A. EMPLOYEES ASSOCIATION a/w INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 68, AFL-CIO, and OLIVER TWIST, JUDITH TWIST, KEVIN BAILY, MARK P. DESORBO, DAVID R OAT, DAVID A. CUSICK, JOHN M. BUNTING, A.R. SIMMONS, J. DAVID JOHNSON, ROY S. MACCULLOCH, DANIEL A. SLATER, SR., GERALD H. FOSTER, SR., and DAVID E. BARNETT on behalf of themselves and all other persons similarly situated,

Plaintiffs,

v.

THE DELAWARE RIVER AND BAY AUTHORITY
Defendant.

CIVIL ACTION

ORDER

This matter having been opened to the Court by Carl D. Poplar, Esq., attorney for Defendant, The Delaware River and Bay Authority, before the Hon. John F.

Callinan, J.S.C. on November 19, 1993, in the presence of Kroll and Gaschter, attorneys for the Plaintiff, Raymond G. Heineman, Esq. of Counsel appearing, in Defendant's Motion to Dismiss Plaintiffs' Complaint, and the Court having heard the arguments of counsel, and good cause being shown;

IT IS ON THIS 19th day of November, 1993, ORDERED that Defendant's Motion to Dismiss Plaintiffs' Complaint is hereby GRANTED.

/s/ John F. Callinan
HON. JOHN F. CALLINAN, J.S.C.

Dated: November 17, 1993

APPENDIX D

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
COUNTY OF CAPE MAY

Docket Number CPM-C-77-93

INTERNATIONAL UNION LOCAL 68, *et al.*,
Plaintiff,

v.

DELAWARE RIVER AND BAY AUTHORITY,
Defendant.

TRANSCRIPT OF MOTION
AND ORDER TO SHOW CAUSE

Date: November 19, 1993

BEFORE:

HON. JOHN F. CALLINAN, J.S.C.

* * * *

[2] THE COURT: All right, in any order.

COURT CLERK: International Union versus Delaware Bay.

MR. POPLAR: Ready for defendant.

MR. HEINEMAN: Ready for plaintiff, Your Honor.

THE COURT: Come forward. Appearances please.

MR. HEINEMAN: Your Honor, for the plaintiffs Raymond Heineman of the firm of Kroll and Gaechter.

MR. POPLAR: Carl Poplar, I'm New Jersey counsel for the DRBA. Here's Mr. Frank Biani (phonetic) and John Abramsyk (phonetic). They're New Jer—they're Delaware counsels for the DRBA.

THE COURT: All right, Frank Biani and John Abramsyk?

UNIDENTIFIED ATTORNEY: Yes, Your Honor.

THE COURT: All right. This is a motion to dismiss the plaintiffs' complaints. Let me hear the factual scenario, counsel. Briefly.

MR. POPLAR: We did not initiate this, but basically, Your Honor, the Delaware River and Bay Authority is a bi-state authority. It's created by a compact, which is a law that's required to be passed by both the States of Delaware and New Jersey, and it has to be ratified by congress. In this particular instance the plaintiffs brought a lawsuit seeking to organize for a collective bargaining the employees at the Cape May facility. The basis for the plaintiffs' complaint is inequity, claiming that there is some jurisdiction of this court to [3] hear this case; that there is some statutory basis to hear this case; that there is some constitutional basis to hear this case. There is no constitutional provision that's applicable in New Jersey or in Delaware governing the Delaware River/Bay Authority. There is no statute that is applicable that permits the organization of the employees in Delaware or New Jersey.

THE COURT: Well, the handbook says that—that an employee may elect—

MR. POPLAR: Absolutely.

THE COURT: —anyone to represent him and file a grievance and represent him in front of the employer, including a labor union.

MR. POPLAR: That's correct.

THE COURT: But it does not indicate or go so far as to authorize the labor union to engage in a collective bargaining.

MR. POPLAR: That's correct.

THE COURT: I'd like to hear you on that, counsel.

MR. HEINEMAN: Your Honor, the handbook itself, in the union's view, is a statement that's derived from the earlier interpretations of Article 1, Paragraph 19 of the New Jersey Constitution. That was subsequently interpreted to provide that unions have a right to engage in collective negotiations, rather than collective bargaining, on behalf of their members. Collective negotiations would

entail the right to meet, the [4] right to enter into agreements, the right to have those agreements enforced. That law has been interpreted by the New Jersey Courts as applying to the New Jersey Constitution and as implementing the public sector labor law in the State of New Jersey.

THE COURT: So your position would be by inserting that provision in their handbook, they bring themselves under the jurisdiction of the New Jersey Courts?

MR. HEINEMAN: No, Your Honor. Our view is that by—by being an agency of the State of New Jersey, as well as the State of Delaware, Your Honor, it's clear they're a bi-state agency. But they are an agency of the State of New Jersey. Accordingly, as an agen—

THE COURT: Wait a minute. I'm not so sure I can leap to that conclusion. There—the argument can be that they are either a bi-state agency that has a life of its own and derives its power through mutual grants by each state on a collateral basis, or that they are merely subdivisions of the states that have got together to form an authority that derives is powers from the state legislature as such.

MR. HEINEMAN: Your Honor, it's—

THE COURT: You argue for the latter view.

MR. HEINEMAN: No, Your Honor. It's clear that they are a bi-state agency. In the plaintiffs' view, when the State of New Jersey created this and established its agency, it was [5] still bound by its own constitution. It was not free to alienate the rights and privileges of its citizens, including its employees whom its constitution granted the right to present grievances to their employer and the right to organize. It could not alienate those by entering into a bi-state compact. It has no authority to do so.

THE COURT: So you're taking the view that the employees of the bi-state authority deprived their rights from the state constitution of the respective states in which they live?

MR. HEINEMAN: That as well as the fact that each state has—

THE COURT: So the case may arise where Delaware employees might have certain rights that are not coincidental with New Jersey employees. Wouldn't that be a real possibility there?

MR. HEINEMAN: If it were in the constitution it would be, Your Honor, and, frankly, that's a—I mean I don't think we have to cross that bridge because that's not the case at the moment.

THE COURT: Well, this is—this is an authority that deals in bridges, and I have to cross that bridge when I—when I make a decision here. I think that I'm getting very dangerously close to—to going outside the sphere of this court's authority when I enter an order that affects a bi-state authority.

[6] MR. HEINEMAN: Your Honor, the Delaware Constitution is in no way repugnant or different or in conflict with the rights granted in the New Jersey Constitution.

THE COURT: You say that. You say that.

MR. HEINEMAN: The Delaware court, Your Honor, has—the Delaware court in *Corrella* (phonetic)—*DRBA versus Corrella*—recognized that in Delaware public sector employees have the right to bargain and that law is constitutional in Delaware.

THE COURT: Has anyone ordered the bi-state authority—any court—to engage in collective negotiations?

MR. HEINEMAN: No, Your Honor.

THE COURT: This is coming from lowly Cape May County for the first time? Case of first impression?

MR. HEINEMAN: The—yes. The other authorities—the New York Port Authority, it is specifically built into the compact. The Delaware River Port Authority, operating the bridges crossing between New Jersey and Pennsylvania, has voluntarily entered into collective negotiations.

THE COURT: Isn't that the point though? They do it voluntarily. They do it for public reasons. They do it to satisfy their constituency. But they do it as a bi-state agency.

MR. HEINEMAN: That's true, Your Honor.

THE COURT: And they don't do it under the coercion of [7] any particular state's court.

MR. HEINEMAN: Well, Your Honor, our view is that we could just as easily go into the state courts of Delaware, the Chancery Courts rather than the administrative agency, to have a similar order entered. Both based on the New Jersey Constitution and because both states by enacting substantially similar legislation have agreed that the policies' of both states and the procedures and statutes of both states will apply to this authority. That is a case of first impression clearly, Your Honor.

MR. POPLAR: Judge, respectfully, I don't think that this case is close. Judge O'Hern in the *PERC* case—the *DRBA/PERC* case—suggested there's a complex issue that they didn't have to reach in that case because they had a contract. In that particular case, he suggested that maybe even a state court, when we're dealing with a bi-state compact, doesn't even have jurisdiction because it's exclusively a federal question. But in that case, because they were dealing with contract law and consent to contract, they didn't have to reach that particular issue. On one hand plaintiffs' counsel is trying to do some kind of interpretation of a contract. He's trying to by indirect methods say that the amalgamation of various nonsimilar, nonexact statutes are a de facto amendment to a compact, and that, Your Honor, I would submit is a non sequitur. Plaintiffs' counsel in his briefs—

[8] THE COURT: It's not a non sequitur. If it could be—if it could be synthesized into a solid legal argument, it would be a wonderful point.

MR. POPLAR: It's attractive and it's enticing because the politics or the desire to labor organizations to have certain rights. Judge Halpern in his opinion—in his Appellate Division opinion regarding the DRBA, which was affirmed by the Supreme Court in the *Pecurian* (phonetic) opinion, said the procedure is there has to be an amendment to a compact before you can have some kind of action or activity, and this—

THE COURT: What would be—what would be the impetus for a bi-state authority to amend that compact to expose itself to collective bargaining?

MR. POPLAR: I don't understand what you mean, what would be the impetus—

THE COURT: What would cause it to do that? They meet one day and say let's open ourselves up for collective bargaining, it sounds like a good idea. Like junk bonds.

MR. POPLAR: If the political process—if the political process is that both the commissioners in Delaware and the commissioners in New Jersey and the governors of those two states agree that there should be an amendment to the compact, that there should be a permission for the employees to enter into a collective bargaining agreement, it could be done.

THE COURT: So the impetus would be a political one?

[9] MR. POPLAR: Well, in order to get legislation passed. And I don't mean political with a large "P", I mean with a small "P".

THE COURT: Right.

MR. POPLAR: I don't mean partisan, republican and democratic politics. I mean the political decision that it would be in the best public interest to permit and the best societal interest. Counsel in his brief suggested or stated that we, the DRBA, accept the applicability of the New Jersey constitutional provision, talking about private sector, collective bargaining and pri—public sector negotiations and proposals. We don't concede and have not concede—conceded that that New Jersey constitutional provision is applicable to this DRBA. The fact that we in our bylaws have stated that the employees have a right to designate themselves, or another person, or another entity as a representative to submit grievances and proposals is something that we chose to do. If we did not choose to do it, there would be a question as to whether or not the employees could even present grievances and proposals. But we chose to do it and you don't have to reach that

interest—that issue. The high water mark of the rights of the employees and this particular client, the DRBA, a bi-state authority, is what's in the bylaws properly promulgated by the ocmmissioners? Let me give you a suggestion, a hypothetical what may happen if Your Honor rules for the plaintiff, and I submit that Your Hon[10]or should not rule for the plaintiff. If Your Honor rules for the plaintiff and you direct the DRBA to permit an election, and you direct the DRBA, if there is a successful election, to enter into collective bargaining, and you say I want you to honor that contract, or whatever—or I direct you to argue, and then we enter into a piece of paper, and the governor of Delaware says I don't like it, I veto it, it doesn't work. Because in order for there to be action by the authority, you have twelve commissioners, six from New Jersey, six from Delaware, four of Delaware's commissioners have to agree and four of New Jersey's commissioners have to agree. That's a whole bunch of people. That's four—you know, if there's only three showing up at a meeting, you can't have action. If they agree, it's not done yet. You have to wait ten days, because the governor of New Jersey and the governor of Delaware has a right of veto of their action or activity, and that's in the compact. That's a law that was passed by both sides. That's a law that was ratified by congress.

THE COURT: What if the—the plaintiff here went into federal court?

MR. POPLAR: If they went into federal court, there may be a better foundation for jurisdiction cause they're dealing with compact. That is jurisdiction over the parties. Then the question becomes whether or not they have any law that permits the courts to order the authority to do something that the [11] bi-state compact didn't authorize and that the governors of each state didn't authorize, and then the answer to that is a federal judge, because of the separations of power, does not have the right to do it.

THE COURT: Well, it would be a state's rights issue, would it not?

MR. POPLAR: Well, no, it would not be a state's rights issue.

THE COURT: What—the reservation of powers?

MR. POPLAR: No. Respectfully, Your Honor, in this—the bi-state compact and the bi-state authority is not a state agency. It can't be argued to be a state agency. It can't be argued to be a subdivision within the state. It's a sui generis or an unique type of entity. When we look at *PERC* and we look at—

THE COURT: I don't think that's the way a federal court would parse that question. I think the federal courts would consider that creature a derivation of collective state action, and would then analyze it from a reservation of powers situation. I don't have to reach that. That's not the kind of decision that this court makes.

MR. POPLAR: That's when we get way down the line. The question is whether or not there is jurisdic—in the first instance, as we set forth in our brief, is there subject matter jurisdiction for this court, a New Jersey court, here in [12] Cape May County? Our position is there is not subject matter jurisdiction. There is no statute. Clearly *PERC* doesn't apply, there's no dispute. The comparable legislative enactment in Delaware doesn't apply. The New Jersey Constitution does not specifically apply. When we're talking about what this plaintiff is trying to do, they're trying to take a minimum number of employees, who apparently work in New Jersey, the minority number of employees who work for the Delaware River and Bay Authority, and create some kind of contractual collective bargaining rights for them that would directly impact on the vast number of employees who reside and work in Delaware. Is there jurisdiction—subject matter jurisdiction? No, there is not. Is there a statutory predicate? No, there is not. Is there a constitutional predicate? No, there is not. It's—what the plaintiff apparently seems to do is, to look at a Delaware statute, look at a New Jersey statute and say well, they say sort of the same thing. They sort of give certain rights to public employees to do collective

bargainings, although the statutes aren't identical. When you look at how those statutes are administered, they're administered differently. PERC has its own set of rules and regulations and the Department of Labor in Delaware has its own set—

THE COURT: You don't fault the attorney for doing that. That's how things get changed, do they not?

MR. POPLAR: There is no question that plaintiff's [13] lawyer has made a very enticing and attractive argument. And I agree that it's attractive and I agree that it's enticing, but I don't agree that it's legal.

THE COURT: All right. Let me hear from your adversary.

MR. HEINEMAN: Thank you, Your Honor. Counsel raises and interesting question, which is, what happens if the governor of one of the states vetoes? And that gets to the root, I think, of the concept of collective negotiations. Collective negotiations in both states, Your Honor, in Delaware and in New Jersey are both subject to overall regulation statute of the agency and of the states. So counsel's hypothetical, under the compact, if a governor were to veto the collective negotiations agreement, it would fall because you can't enter into a collective negotiations agreement based on the law of either states—

THE COURT: Now,—

MR. HEINEMAN: —that counteracts the state regulation. You can't do it.

THE COURT: Your—your clients basically work in Cape May?

MR. HEINEMAN: There are members of the DRBA association in both states, but yes, we are seeking solely to organize the Cape May Lewes Ferry.

THE COURT: On the other side of the bridge in—

MR. POPLAR: Lewes.

[14] THE COURT: Where is that?

MR. POPLAR: Lewes.

MR. HEINEMAN: Lewes Delaware, Your Honor.

THE COURT: No. no. That's not a bridge, that's a—

UNIDENTFIED ATTORNEY: New Castle.

MR. POPLAR: New Castle, rather.

MR. HEINEMAN: Oh, New Castle.

THE COURT: And then on the other side in New Jersey where they pick up all the drug runners, what's the name of that town?

MR. HEINEMAN: Pennsville. Pennsville, Your Honor.

MR. POPLAR: Cocaine alley, Judge.

THE COURT: Right. What happens when those people want to organize and they go before a judge in that county and the judge says no, I don't interpret it that way? The judge in Cape May is wrong. You can—you people organize in Cape May, but you can't organize here in this county.

MR. HEINEMAN: Your Honor, that's a—I mean it's possible that two Chancery Court Divisions could have conflicting interpretations and it would have to be resolved obviously, I think, at the Appellate level. But I think that my view, Your Honor, based on the constitution and on the substantially similar legislative actions of both states, is that that would not hapen. I mean I take issue the—with counsel's view of the New Jersey Constitution as not being applicable. The New [15] Jersey State Constitution, the rights and privileges section, which includes Article 1, Section 19, are inalienable rights. A state cannot contract those rights away. Your Honor.

THE COURT: Oh, I know I have some curent jurisdiction with federal courts on civil rights matters. But—but why wouldn't this issue, which seems to be—have an overriding civil rights overtone, two states getting together and maybe impacting upon the civil rights of—of employees, why wouldn't that be better brought in federal court?

MR. HEINEMAN: Well, Your Honor, there's the question of the compact, but the compact in federal jurisdiction does not rate—does not rise to the relationships of the states with their employees, except insofar as it

would come from the 14th and the 5th Amendments, and these rights—the rights to collective negotiations do not fall within the rights of the 5th and 14th Amendments. So there—the rights of collective negotiations for public employees are purely a creature of state law. In the plaintiffs' view, we have to come into state court. Now the Chancery—the Chancery Courts of the State of New Jersey have taken jurisdiction over labor disputes that are not subject either to the NLRB or, if you look at the Association of Retarded Citizens case in Atlantic County, the court there, while saying go to *PERC*, see what they say, says if *PERC* doesn't have jurisdiction and the NLRB doesn't have jurisdiction, we have jurisdiction. The Chancery Courts in the State [16] of Delaware clearly have subject matter jurisdiction. When this authority in the '50's in the *Masters, Mates and Pilots* case sought to enjoin picketing, a labor dispute, they came into the Chancery Courts of the State of New Jersey. The sole basis was Article 1, Section 19. That's what that entire case discusses, whether public employees have the right to strike within the meaning of Article 1, Section 19. Now I'll admit that when you carefully parse each sentence, the court never says these employes are under the DRBA, or under the New Jersey Constitution. But the entire discusion is in terms of that, Your Honor. When you look at the personnel manual, you'll note that every officer of the DRBA, whether in New Jersey or Delaware, swears to uphold and support the constitutions of both Delaware and New Jersey. The *Corrella* case in Delaware discusses solely for New Jersey law the constitution. That case predates the *PERC* act. When I saw counsel's brief that they were not covered by the constitution, frankly, Your Honor, I was flabbergasted. I had assumed all along from all the cases that have arisen on this authority that they were under the constitution and my view, Your Honor, and the plaintiffs' view—

THE COURT: What constitution? The constitution—

MR. HEINEMAN: The Constitution of the State of New Jersey—

THE COURT: And the constitution—

MR. HEINEMAN. —and the Constitution of the State of [17] Delaware both govern.

THE COURT: And in areas where they conflict, what constitution?

MR. HEINEMAN: In areas where they conflict the authority—the states—if they were rights and privileges, the authority could not act in that area, Your Honor, and would have—that would have to be resolved, and, frankly, it hasn't happened. The rights and—

THE COURT: But where would it be resolved? That's my question.

MR. HEINEMAN: Your Honor, I don't know,—

THE COURT: All right.

MR. HEINEMAN: —to be quite frank, because the rights and privileges under Article 1 of the New Jersey constitution are all fundamental human rights and they—none of those conflict with Delaware. The authority does have police power and has recognized that for purposes of that power the procedures of either state can apply. So those constitutional protections apply. But, Your Honor, I think it's clear that a state in entering into this contract cannot abrogate the constitutional rights, the rights and privileges of its own citizens and that's—if you accept counsel's arguments, that's exactly what the State of New Jersey has done. In entering into this compact, if counsel is correct, the State of New Jersey has waived the rights of its citizens and the rights of its own [18] employees to engage in collective negotiations.

THE COURT: Haven't they compromised themselves in other areas when—when they engage in these bi-state or tri-state compacts? Don't they—

MR. HEINEMAN: Correct, Your Honor. They have given up their own sovereignty,—

THE COURT: Right.

MR. HEINEMAN: which is their power and which they have the ability to do under the U.S. Constitution

and under their own, but they cannot surrender the rights and privileges of their own employees.

THE COURT: But can they surrender their right to have to defend those—those rights and privileges of their own employees?

MR. HEINEMAN: No, Your Honor, I—our position is that they cannot. They are bound by their constitution that these are inalienable rights. The citizens of the State of New Jersey, the employees of the State of New Jersey have these inalienable rights. The state cannot contract them away.

THE COURT: All right.

MR. POPLAR: Judge, I'm not sure what rights we're talking about. Under constitutional provision Article 1, Section 9, it is clear that public employees do not have the rights of collective bargaining.

THE COURT: Except those rights that are granted by [19] the state.

MR. POPLAR: Except rights that are granted not by the constitution, but by subsequent legislative enactment and—

THE COURT: Do you disagree with that?

MR. HEINEMAN: Yes, Your Honor.

THE COURT: I see you geting very antsy about that.

MR. HEINEMAN: Your Honor, counsel discusses what we call collective bargaining. I agree public employees in the State of New Jersey do not have the right to engage in collective bargaining. We're talking about collective negotiations. The courts of the State of New Jersey—

THE COURT: The distinction being?

MR. HEINEMAN: The right to strike, the right to engage in—the right to have your employer pass a law, regulation or statute which eliminates a term and condition of employment. In the private sector, Your Honor, if I were working for a private sector company, my employer cannot contract or decide I'm going to do this. I would have the right to challenge that through collective

bargaining. In the public sector, Your Honor, if the State of New Jersey or the State of Delaware, for that matter, sets up a civil service system, mandates a health insurance system, mandates a pension system, as a public employee, I would have no right to negotiate those. That's set by regulation.

THE COURT: Or the right to strike.

[20] MR. HEINEMAN: Or the right to strike. So—in the Delaware verbiage collective bargaining is the same as New Jersey's collective negotiations. It's just the New Jersey language, I think is more precise.

THE COURT: All right.

MR. HEINEMAN: And the New Jersey Courts, if you look at *Porcelli versus Titus,* if you look at *Lullo,* if you look at the state counsel cases, on my brief, while they clearly are employees only within the State of New Jersey, the state courts have said these are the rights, the rights and the—the New Jersey Employer/Employee Relations Act are the rights under the New Jersey State Constitution. They are one and the same, Your Honor, at this point.

THE COURT: And the collective negotiations that you talk about, mandated by the states, have their own procedural provisions?

MR. HEINEMAN: Correct. The admin—

THE COURT: They've remedies in the event that you're dissatisfied with the rulings below?

MR. HEINEMAN: The—in Delaware, Your Honor,—

THE COURT: Your right to appeal within limits.

MR. HEINEMAN: The—you would have the right. There is a—the state sector bargaining law establishes an administrative agency and then the right to go into Chancery Court. My understanding of the unfair labor practice is you would go [21] right in the Chancery Court.

THE COURT: It's not too different from New Jersey. But the point is, there is machinery in place.

MR. HEINEMAN: Correct, Your Honor. However, it's crystal clear at this point that neither of those admin-

istrative agencies have jurisdiction. So then we're left with statutory rights of a substantially similar nature—

THE COURT: And no—and no procedural—

MR. HEINEMAN: And no administration.

THE COURT: —mechanism to exercise.

MR. HEINEMAN: And that's when you have to go back in plaintiffs' view to the *Christ Hospital* case, the *Association of Retarded Citizens* case and come to Chancery. And that's why we're here.

THE COURT: So if I order—if I order the authority to do this, they have to—without a procedural mechanism in place, they'd have to come up with one?

MR. HEINEMAN: Your Honor, the Jersey Court cases have all ordered elections conducted by a private sector mechanism. Generally it's been the American Arbitration Association.

THE COURT: I'm not—I'm not only talking about that. I'm talking about election, negotiations, impasse.

MR. HEINEMAN: The Chancery Courts—there are —there's a body of case law which has been developed by the Chancery Courts on all those issues.

[22] THE COURT: All right.

MR. HEINEMAN: They have looked to the law of—in New Jersey cases, the law of New Jersey and the federal experience. The law—the judicial law of the State of Delaware, Your Honor, is in all respects the same as that in New Jersey. With deference to counsel's arguments that there are differences in the wording, I have found no conflict in the case law and interpretation of Delaware and that of New Jersey and everything I have seen is that they treat in all respects the general rights, the specific procedures that we would be asking this court, they are the same in both states.

THE COURT: All right. One last word now.

MR. POPLAR: Judge, counsel seems to amalgamate collective bargaining and collective negotiations. There is nothing in Article 1, Section 19 that permits either collective bargaining or collective negotiations by the public employees. That can only be done through an—the enact-

ment of PERC, which clearly doesn't apply to the authority. The cases that were referred to by counsel about this Chancery Court mechanism are private sector labor cases. This is a public sector case. In order for this court to grant the relief that counsel is seeking, Your Honor has to reverse at least two New Jersey Supreme Court decisions, it has to amend by judicial fiat a bi-state compact that needed the signature of two state legislatures, two governors and congress and a signature by the presi-
[23] dent. Our particular compact was amended recently, in 1990. In that amendment to the compact there was no suggestion or change of any desire that anybody other than the executive director should have the authority regarding employment and conditions for employees. This, Your Honor, is a case not of first impression. It has been addressed. What it is, it's a case of subsequent impression seeking this court to change existing and absolutely unrefutable law.

MR. HEINEMAN: Your Honor, if I may be heard on that point?

THE COURT: Yes.

MR. HEINEMAN: Your Honor, it is clear that the compact was recently amended. However, I disagree that this point has been raised before. When you look at the *PERC* case, the narrow issue the court focused in, and it tells you in the beginning of that case, Your Honor, that it is a narrow issue, is the jurisdiction of *PERC* to unilaterally on behalf of the State of New Jersey assert jurisdiction. That's the narrow issue. The issue of substantially similar or the issue of the applicability of the New Jersey Constitution and the inherent jurisdiction of the Chancery Court has never been addressed. Now when plaintiffs look at the legislative history, we see a Delaware Court which says no jurisdiction for the Department of Labor, but if New Jersey enacts substantially similar legislation, then the general rights—the law—that law will ap-
[24] ply, and we look at New Jersey law that say there's no jurisdiction. There's subsequent case law where New Jersey though adopts the substantially similar theory of

the Delaware Courts in *Corrella*. So this concept of going into Chancery Court has never been addressed, Your Honor. For all we know it is as valid a point to say the legislature, when it refused to—when it did not amend to provide jurisdiction of either state agency, was comfortable that the employees would have the constitutional right as citizens of New Jersey and as public employees of New Jersey to come into Chancery to seek assertion and protection of their fundamental and inherent right to engage in collective negotiations. So I find counsel's argument unpersuasive. It's never been raised before. This is a case of first impression.

THE COURT: All right. I'm ready to—

MR. POPLAR: Judge, if I can just refer you to a page on one of the opinions?

THE COURT: No, I'm ready to decide.

MR. POPLAR: Fine, Your Honor.

THE COURT: The Delaware River Port Authority is not the agency of a single state, but rather a public corporate instrumentality of both New Jersey and Pennsylvania (sic). And since interstate compacts are not a product of a single state, no creative state can unilaterally impose additional powers, duties or responsibilities that infringe on the contract— [25] compact. When a compact, however, recognizes the individual and unilateral jurisdiction of a compact state, then that compact may be subject to a single state's jurisdiction. But that's not the case here. Some courts have held that a state agency to be subject to complimentary or parallel state legislation, that does not intrude or infringe upon the mission of the agency or their ability to perform that mission, and, for example, there are cases that hold that bi-state agency employees must observe stop lights in New Jersey, just as in Pennsylvania, even though neither state has adopted such regulations within the framework of the compact. But forcing the agency into collective bargaining, or collective negotiations as you put it, cannot be compared to stopping at lights. Collective negotiations would be intru-

sive to running the DRPA. Cases have held that the—a particular state, and New Jersey for example, lacks the soverign authority to direct the DRPA to cede jurisdiction to New Jersey. And the Supreme Court of the United States have held in appropriate cases that a single state cannot dictate the policy of a bi-state agency. So it is clear that the New Jersey Courts cannot, at least—certainly not at the trial level, dictate the policy of the bi-state agency such as the DRPA based on the Supreme Court ruling, the New Jersey Court rulings that I referred to before in *Gauntt*. It appears that this court has no choice but to dismiss the case for lack of jurisdiction. But even if this court was to [26] hold, or were to hold that this—there was jurisdiction in this case, I would have to dismiss this matter for lack of relief. It has been held in many cases that to grant a—that a grant to public employees, such as in this case, of full collective bargaining rights or collective negotiation rights without the right to strike must be deliberately expressed and is not to be implied, and although the authority has broad powers to enter into contract, the New Jersey Supreme Court has held that this has no relation to any obligation on the part of the authority to enter into collective negotiations in its full sense. The authority could not even be required to recognize or collectively negotiate with the exclusive bargaining representatives selected through the commission, and there are cases on that. I have to say that I am persuaded emotionally by your arguments, that somehow a decision should be reached by somebody on whether there's going to be collective negotiations or whether the states are going to tolerate this condition to exist that affects the citizens of their states. But as I indicated before, there's a political process that created this agency. There's a political process that drives the decision making that's engaged in by this agency on a day-to-day basis. And it seems clear to me that there's a political process that should drive the agency to recognize the realities of public

employment as it applies in both states. But for a Court of Chancery to intrude in this area, I think is rather dangerous [27] and I think it raises conflicts not only within the states, or between the states, but within this state as I've indicated before. Without guidance from the Appellate Courts of this state, this court would be reluctant to do anything else but to dismiss the plaintiff's complaint, send him to the Appellate Division and get some guidance there that would bind all the trial courts of this state, and that's the decision I reach in this matter. I think the arguments were well done, counsel.

MR. POPLAR: Thank you for your courtesies, Judge. Thank you.

MR. HEINEMAN: Thank you, Your Honor.

APPENDIX E

[Filed Apr. 24, 1997]

SUPREME COURT OF NEW JERSEY
M-1058 September Term 1996

41,006

INTERNATIONAL UNION OF OPERATING ENGINEERS, ETC., *et al.*,
Plaintiffs,

v.

THE DELAWARE RIVER and BAY AUTHORITY,
Defendant-Movant.

ORDER

This matter having been duly presented to the Court, it is ORDERED that the motion for reconsideration of the opinion is denied.

WITNESS, the Honorable Deborah T. Porits, Chief Justice, at Trenton, this 23rd day of April, 1997.

/s/ [Illegible]
Clerk of the Supreme Court

APPENDIX F

PERTINENT STATUTORY PROVISIONS

DELAWARE-NEW JERSEY COMPACT

PUBLIC LAW 87-678; 76 STAT. 560
[H. J. Res. 783]

Joint Resolution granting consent of Congress to the State of Delaware and the State of New Jersey to enter into a compact to establish the Delaware River and Bay Authority for the development of the area in both States bordering the Delaware River and Bay.

Whereas, the State of Delaware and the State of New Jersey, pursuant to legislative authority adopted by each State, being 53 Laws of Delaware, chapter 145, and P.L.1961, chapter 66 of the Laws of New Jersey, have provided, subject to the consent of Congress, for a compact, known as the Delaware-New Jersey Compact, establishing "The Delaware River and Bay Authority" for the development of the area in both States bordering the said Delaware River and Bay; and

Whereas, said compact reads as follows:

DELAWARE-NEW JERSEY COMPACT

Whereas, the State of Delaware and New Jersey are separated by the Delaware River and Bay which create a natural obstacle to the uninterrupted passage of traffic other than by water and with normal commercial activity between the two States thereby hindering the economic growth and development of those areas in both States which border the River and Bay; and

Whereas, the pressures of existing trends from increasing traffic, growing population and greater industrialization indicate the need for closer cooperation between the two States in order to advance the economic de-

velopment and to improve crossings, transportation, terminal and other facilities of the area; and

Whereas, the financing, construction, operation and maintenance of such crossings, transportation, terminal and other facilities of commerce and the over-all planning for future economic development of the area may be best accomplished for the benefit of the two States and their citizens, the region and nation, by the cordial cooperation of Delaware and New Jersey by and through a joint or common agency or authority;

Now, therefore, the State of Delaware and the State of New Jersey, do hereby solemnly covenant and agree, each with the other as follows:

ARTICLE I.

SHORT TITLE

This Compact shall be known as the "Delaware-New Jersey Compact."

ARTICLE II.

DEFINITIONS

"Crossing" means any structure or facility adapted for public use in crossing the Delaware River or Bay between the States, whether by bridge, tunnel, ferry or other device, and by any vehicle or means of transportation of persons or property, as well as all approaches thereto and connecting and service routes and all appurtenances and equipment relating thereto.

"Transportation facility" and "terminal facility" mean any structure or facility other than a crossing as herein defined, adapted for public use within each of the States party hereto in connection with the transportaiton of persons or property, including railroads, motor vehicles, watercraft, airports and aircraft, docks, wharves, piers,

slips, basins, storage places, sheds, warehouses, and every means or vehicle of transportation now or hereafter in use for the transportaiton of persons and property or the storage, handling or loading of property, as well as all apurtenances and equipment related thereto.

"Appurtenances" and "equipment" means all works, building, structures, devices, appliances and supplies, as well as every kind of mechanism, arrangement, object or substance related to and necessary or convenient for the proper construction, equipment, maintenance, improvement and operation of any crossing, transportation facility or terminal facility.

"Project" means any undertaking or program for the acquisition or creation of any crossing, transportation facility or terminal facility, or any part thereof, as well as for the operation, maintenance and improvement thereof.

"Tunnel" means a tunnel of one or more tubes.

"Governor" means any person authorized by the Constitution and law of each State to exercise the functions, powers and duties of that office.

"Authority" means the Authority created by this Compact or any agency successor thereto.

The singular whenever used herein shall include the plural, and the plural shall include the singular.

ARTICLE III.

FAITHFUL COOPERATION.

They agree to and pledge, each to the other, faithful cooperation in the effectuation of this Compact and any future amendment or supplement thereto, and of any legislation expressly in implementation thereof hereafter enacted, and in the planning, development, financing, construction, operation, maintenance and improvement of all projects entrusted to the Authority created by this Compact.

ARTICLE IV.

ESTABLISHMENT OF AGENCY; PURPOSES

The two States agree that there shall be created and they do hereby create a body politic, to be known as "The Delaware River and Bay Authority" (for brevity hereinafter referred to as the "Authority"), which shall constitute an agency of government of the State of Delaware and the State of New Jersey for the following general public purposes, and which shall be deemed to be exercising essential governmental functions in effectuating such purposes, to wit:

(a) The planning, financing, development, construction, purchase, lease, maintenance, improvement and operation of crossings between the States of Delaware and New Jersey across the Delaware River or Bay at any location south of the boundary line between the State of Delaware and the Commonwealth of Pennsylvania as extended across the Delaware River to the New Jersey shore of said river, together with such approaches or connections thereto as in the judgment of the Authority are required to make adequate and efficient connections between such crossings and any public highway or other routes in the State of Delaware or in the State of New Jersey; and

(b) The planning, financing, development, construction, purchase, lease, maintenance, improvement and operation of any transportation or terminal facility within those areas of both States which border on or are adjacent to the Delaware River or Bay south of the aforesaid line and which in the judgment of the States is required for the sound economic developments of the area; and

(c) The performance of such other functions as may be hereafter entrusted to the Authority by concurrent legislation expressly in implementation hereof.

The Authority shall not undertake any project or part thereof, other than a crossing, without having first secured

approval thereof by concurrent legislation of the two States expressly in implementation hereof.

ARTICLE V.

COMMISSIONERS.

The Authority shall consist of ten Commissioners, five of whom shall be residents of and qualified to vote in, and shall be appointed from, the State of Delaware, and five of whom shall be residents of and qualified to vote in, and shall be appointed from, the State of New Jersey; not more than three of the Commissioners of each State shall be of the same political party; the Commissioners for each State shall be appointed in the manner fixed and determined from time to time by the law of each State respectively. Each Commissioner shall hold office for a term of five years, and until his successor shall have been appointed and qualified, but the terms of the first Commissioners shall be so designated that the term of one Commissioner from each State shall expire each year. All terms shall run to the first day of July. Any vacancy, however created, shall be filled for the unexpired term only. Any Commissioner may be suspended or removed from office as provided by law of the State from which he shall be appointed.

Commissioners shall be entitled to reimbursement for necessary expenses to be paid only from revenues of the Authority and may not receive any other compensation for services to the Authority except such as may from time to time be authorized from such revenues by concurrent legislation.

ARTICLE VI.

BOARD ACTION.

The Commissioners shall have charge of the Authority's property and affairs and shall, for the purpose of doing business, constitute a Board; but no action of the Commis-

sioners shall be binding or effective unless taken at a meeting at which at least three Commissioners from each State are present, and unless at least three Commissioners from each State shall vote in favor thereof. The vote of any one or more of the Commissioners from each State shall be subject to cancellation by the Governor of such State at any time within 10 days (Saturdays, Sundays, and public holidays in the particular State excepted) after receipt at the Governor's Office of a certified copy of the minutes of the meeting at which such vote was taken. Each State may provide by law for the manner of delivery of such minutes, and for notification of the action thereon.

ARTICLE VII.

GENERAL POWERS.

For the effectuation of its authorized purposes, the Authority is hereby granted the following powers:

a. To have perpetual succession.

b. To adopt and use an official seal.

c. To elect a chairman and a vice-chairman from among the Commissioners. The chairman and vice-chairman shall be elected from different States, and shall each hold office for two years. The chairmanship and vice-chairmanship shall be alternated between the two States.

d. To adopt by-laws to govern the conduct of its affairs by the Board of Commissioners, and it may adopt rules and regulations and may make appropriate orders to carry out and discharge its powers, duties and functions, but no by-law, or rule, regulation or order shall take effect until it has been filed with the Secretary of State of each State or in such other manner in each State as may be provided by the law thereof. In the establishment of rules, regulations and orders respecting the use of any crossing, transportation or terminal facility owned or op-

erated by the Authority, including approach roads, it shall consult with appropriate officials of both States in order to insure, as far as possible, uniformity of such rules, regulations and orders with the law of both States.

e. To appoint, or employ, such other officers, agents, attorneys, engineers and employees as it may require for the performance of its duties and to fix and determine their qualifications, duties, compensation, pension, terms of office and all other conditions and terms of employment and retention.

f. To enter into contracts and agreements with either State or with the United States, or with any public body, department, or other agency of either State or of the United States or with any individual, firm or corporation, deemed necessary or advisable for the exercise of its purposes and powers.

g. To accept from any government or governmental department, agency or other public or private body, or from any other source, grants or contributions of money or property as well as loans, advances, guarantees, or other forms of financial assistance which it may use for or in aid of any of its purposes.

h. To acquire (by gift, purchase or condemnation), own, hire, lease, use, operate and dispose of property, whether real, personal or mixed, or of any interest therein, including any rights, franchise and property for any crossing, facility or other project owned by another, and which the Authority is authorized to own and operate.

i. To designate as express highways, and control public and private access thereto, all or any approaches to any crossing or other facility of the Authority for the purpose of connecting the same with any highway or other route in either State.

j. To borrow money and to evidence such loans by bonds, notes or other obligations, either secured or un-

secured, and either in registered or unregistered form, and to fund or refund such evidences of indebtedness, which may be executed with facsimile signatures of such persons as may be designated by the Authority and by a facsimile of its corporate seal.

k. To procure and keep in force adequate insurance or otherwise provide for the adequate protection of its property, as well as to indemnify it or its officers, agents or employees against loss or liability with respect to any risk to which it or they may be exposed in carrying out any function hereunder.

l. To grant the use of, by franchise, lease or otherwise, and to make charges for the use of, any crossing, facility or other project or property owned or controlled by it.

m. To exercise the right of eminent domain to acquire any property or interest therein.

n. To determine the exact location, system and character of and all other matters in connection with any and all crossings, transportation or terminal facilities or other projects which it may be authorized to own, construct, establish, effectuate, operate or control.

o. To exercise all other powers not inconsistent with the Constitutions of the two States or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, except the power to levy taxes or assessments, and generally to exercise in connection with its property and affairs, and in connection with property within its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.

ARTICLE VIII.

ADDITIONAL POWERS.

For the purpose of effectuating the authorized purposes of the Authority, additional powers may be granted to the Authority by legislation of either State without the concurrence of the other, and may be exercised within such State, or may be granted to the Authority by Congress and exercised by it; but no additional duties or obligations shall be undertaken by the Authority under the law of either State or of Congress without authorization by the law of both States.

ARTICLE IX.

EMINENT DOMAIN.

If the Authority shall find and determine that any property or interest therein is required for a public use because in furtherance of the purposes of the Authority, said determination shall not be affected by the fact that such property has theretofore been taken over or is then devoted to a public use, but the public use in the hands or under the control of the Authority, shall be deemed superior to the public use for which it has theretofore been taken or to which it is then devoted.

In any condemnation proceedings in connection with the acquisition by the Authority of property or property rights of any character in either State and the right of inspection and immediate entry thereon, through the exercise by it of its power of eminent domain, any existing or future law or rule of court of the State in which such property is located with respect to the condemnation of property for the construction, reconstruction and maintenance of highways therein, shall control. The Authority shall have the same power and authority with respect thereto as the State agency named in any such law; provided that nothing herein contained shall be construed as requiring joint or concurrent action by the two States

with respect to the enactment, repeal or amendment of any law or rule of court on the subject of condemnation under which the Authority may proceed by virtue of this Article.

If the established grade of any street, avenue, highway or other route shall be changed by reason of the construction by the Authority of any work so as to cause loss or injury to any property abutting on such street, avenue, highway or other route, the Authority may enter into voluntary agreements with such abutting property owners and pay reasonable compensation for any loss or injury so sustained, whether or not it be compensable as damages under the condemnation law of the State.

The power of the Authority to acquire property by condemnation shall be a continuing power, and no exercise thereof shall be deemed to exhaust it.

ARTICLE X.

REVENUES AND APPLICATION.

The Authority is hereby authorized to establish, levy and collect such tolls and other charges as it may deem necessary, proper or desirable, in connection with any crossing, transportation or terminal facility or other project which it is or may be authorized at any time to construct, own, operate or control, and the aggregate of said tolls and charges shall be at least sufficient (1) to meet the combined expenses of operation, maintenance and improvement thereof (2) to pay the cost of acquisition or construction, including the payment, amortization and retirement of bonds or other securities or obligations assumed, issued or incurred by the Authority, together with interest thereon and (3) to provide reserves for such purposes; and the Authority is hereby authorized and empowered, subject to prior pledges, if any, to pledge such tolls and other revenues or any part thereof as secu-

rity for the repayment with interest of any moneys borrowed by it or advanced to it for its authorized purposes and as security for the satisfaction of any other obligations assumed by it in connection with such loans or advances. There shall be allocated to the cost of the acquisition, construction, operation, maintenance and improvement of such facilities and projects, such proportion of the general expenses of the Authority as it shall deem properly chargeable thereto.

ARTICLE XI.

COVENANT WITH BONDHOLDERS.

The two said States covenant and agree with each other and with the holders of any bonds or other securities or obligations of the Authority, assumed, issued or incurred by it and as security for which there may be pledged the tolls and revenues or any part thereof of any crossing, transportation or terminal facility or other project, that the two said States will not, so long as any of such bonds or other obligations remain outstanding and unpaid, diminish or impair the power of the Authority to establish, levy and collect tolls and other charges in connection therewith, and that neither of the two said States will, so long as any of such bonds or other obligations remain outstanding and unpaid, authorize any crossing of the Delaware River or Delaware Bay south of the line mentioned in Article IV (a) of this Compact, by any person or body other than the Authority; unless, in either case, adequate provision shall be made by law for the protection of those advancing money upon such obligations.

ARTICLE XII.

SECURITIES LAWFUL INVESTMENTS.

The bonds or other securities or obligations which may be issued by the Authority pursuant to this Compact,

or any amendments hereof or supplements hereto, are hereby declared to be negotiable instruments, and are hereby made securities in which all State and municipal officers and bodies of each State, all banks, bankers, trust companies, savings banks, building and loan associations, saving and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees and other fiduciaries and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of either State, may properly and legally invest any funds, including capital, belonging to them or within their control; and said obligations are hereby made securities which may properly and legally be deposited with and shall be received by any State or municipal officer or agency of either State for any purpose for which the deposit of bonds or other obligations of such State is now or may hereafter be authorized.

ARTICLE XIII.

TAX STATUS.

The powers and functions exercised by the Authority under this Compact and any amendments hereof or supplements hereto are and will be in all respects for the benefit of the people of the States of Delaware and New Jersey, the region and nation, for the increase of their commerce and prosperity and for the enhancement of their general welfare. To this end, the Authority shall be regarded as performing essential governmental functions in exercising such powers and functions and in carrying out the provisions of this Compact and of any law relating thereto, and shall not be required to pay any taxes or assessments of any character, levied by either State or political subdivision thereof, upon any of the property used by it

for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange. The bonds or other securities or obligations issued by the Authority, their transfer and the interest paid thereon or income therefrom, including any profit from a sale or exchange, shall at all times be free from taxation by either State or any subdivision thereof.

ARTICLE XIV.

JURISDICTION; USE OF LANDS.

Each of the two States hereby consents to the use and occupancy by the Authority of any lands and property of the Authority in such State for the construction, operation, maintenance or improvement of any crossing, transportation or terminal facility or other project which it is or may be authorized at any time to construct, own or operate, including lands lying under water.

ARTICLE XV.

REVIEW AND ENFORCEMENT OF RULES.

Judicial proceedings to review any by-law, rule, regulation, order or other action of the Authority or to determine the meaning or effect thereof, may be brought in such court of each State, and pursuant to such laws or rules thereof, as a similar proceeding with respect to any agency of such State might be brought.

Each State may provide by law what penalty or penalties shall be imposed for violation of any lawful rule, regulation or order of the Authority, and, by law or rule of court, for the manner of enforcing the same.

ARTICLE XVI.

NO PLEDGE OF CREDIT.

The Authority shall have no power to pledge the credit or to create any debt or liability of the State of Delaware, of the State of New Jersey, or of any other agency or of any political subdivision of said States.

ARTIVLE XVII.

LOCAL COOPERATION.

All municipalities, political subdivisions and every department, agency or public body of each of the States are hereby authorized and empowered to cooperate with, aid and assist the Authority in effectuating the provisions of this Compact and of any amendment hereof or supplement hereto.

ARTICLE XVIII.

DEPOSITARIES.

All banks, bankers, trust companies, savings banks and other persons carrying on a banking business under the laws of either State are authorized to give security for the safekeeping and prompt payment of moneys of the Authority deposited by it with them, in such manner and form as may be required by and may be approved by the Authority, which security may consist of a good and sufficient undertaking with such sureties as may be approved by the Authority, or may consist of the deposit with the Authority or other depositary approved by the Authority as collateral of such securities as the Authority may approve.

ARTICLE XIX.

AGENCY POLICE.

Members of the police force established by the Authority, regardless of their residence, shall have in each State, on the crossings, transportation or terminal facilities

and other projects and the approaches thereto, owned, operated or controlled by the Authority, and at such other places and under such circumstances as the law of each State may provide, all the powers of investigation, detention and arrest conferred by law on peace officers, sheriffs or constables in such State or usually exercised by such officers in each State.

ARTICLE XX.

REPORT AND AUDITS.

The Authority shall make annual reports to the Governors and Legislatures of the State of Delaware and the State of New Jersey, setting forth in detail its operations and transactions, and may make such additional reports from time to time to the Governors and Legislatures as it may deem desirable.

It shall, at least annually, cause an independent audit of its fiscal affairs to be made and shall furnish a copy of such audit report together with such additional information or data with respect to its affairs as it may deem desirable to the Governors and Legislatures of each State.

It shall furnish such information or data with respect to its affairs as may be requested by the Governors or Legislatures of each State.

ARTICLE XXI.

BOUNDARIES UNAFFECTED.

The existing territorial or boundary lines of the States, or the jurisdiction of the two States established by said boundary lines, shall not be changed hereby.

Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That:

The consent of Congress is hereby given to the States of Delaware and New Jersey to enter into the Compact set forth in this resolution, except that nothing contained in such compact shall be construed as impairing or in any manner affecting any right or jurisdiction of the United States in and over the area which forms the subject of such compact.

Sec. 2. In addition to any other requirement of law, any project constructed by the Delaware River and Bay Authority in or over the navigable waters of the United States shall be subject to the procedural requirements of section 2(a) of the Fish and Wildlife Coordination Act, as amended (48 Stat. 401; 16 U.S.C. 662(a)).

Sec. 3. Nothing in this resolution shall be construed as—

(a) amending or superseding the provisions of the Act of September 27, 1961 (75 Stat. 688), or

(b) granting the consent of Congress to the use of tolls collected on any crossing for the financing of any transportation or terminal facility constructed or operated by the Authority, or

(c) granting advance consent of Congress for the performance by the Authority of other functions, as contemplated by Article IV, paragraph (c) of the Compact or for the assumption by the Authority of additional powers, as contemplated by Article VIII of the Compact.

Sec. 4. The right is hereby reserved to the Congress or any of its standing committees to require of the Authority the disclosure and furnishing of such information and data as is deemed appropriate by the Congress or

any committee thereof having jurisdiction of the subject matter of this resolution.

Sec. 5. The right to alter, amend, or repeal this joint resolution is hereby expressly reserved.

Approved September 20, 1962.

Public Law 101-565
101st Congress

Joint Resolution

Granting the consent of the Congress to amendments to the Delaware-New Jersey Compact, and for other purposes.

Whereas the State of Delaware and the State of New Jersey, pursuant to legislative authority adopted by each State, being 53 Laws of Delaware, chapter 145, and Public Law 1961, chapter 66 of the Laws of New Jersey, have provided, subject to the consent of Congress, for a compact, known as the Delaware-New Jersey Compact, establishing "The Delaware River and Bay Authority" for the development of the area in both States bordering the said Delaware River and Bay; and

Whereas the State of Delaware and the State of New Jersey, pursuant to legislative authority adopted by each State, subject to the consent of Congress, have provided for an amendment to the Delaware-New Jersey Compact to authorize the Delaware River and Bay Authority to undertake economic development projects, other than major projects, at its own initiative, and to undertake major projects after securing only such approvals as may be required by the legislation of the State in which the project is to be located, except the Authority is prohibited from undertaking any major project to be located in the Delaware River and Bay, including, without limitation, any deep-water port or superport, without the prior approval, by concurrent legislation, of the two States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONSENT OF CONGRESS.

The Congress consents to the amendments to the Delaware-New Jersey Compact which have been enacted by the States of Delaware and New Jersey, so that the Delaware-New Jersey Compact reads substantially as follows:

"DELAWARE-NEW JERSEY COMPACT

"Whereas the States of Delaware and New Jersey are separated by the Delaware River and Bay which creates a natural obstacle to the uninterrupted passage of traffic other than by water and with normal commercial activity between the two States thereby hindering the economic growth and development of those areas in both States which border the River and Bay; and

"Whereas the pressures of existing trends from increasing traffic, growing population, and greater industrialization indicate the need for closer cooperation between the two States in order to advance the economic development and to improve crossings, transportation, terminal, and other facilities of the area; and

"Whereas the financing, construction, operation and maintenance of such crossings, transportation, terminal, and other facilities of commerce and the overall planning for future economic development of the area may be best accomplished for the benefit of the two States and their citizens, the region and Nation, by the cordial cooperation of Delaware and New Jersey by and through a joint or common agency or authority; and

"Whereas the Delaware-New Jersey Compact, enacted pursuant to 53 Laws of Delaware, Chapter 145 (17 Del. C. § 1701) and Public Law 1961, c. 66 (C. 32:11E-1 et seq.) of the Pamphlet Laws of New Jersey, with the consent of the United States Con-

gress by Joint Resolution being Public Law 87-678, 87th Congress, H.J. Res. 783, September 20, 1962, created the Delaware River and Bay Authority with the intention of advancing the economic growth and development of those areas in both States which border the Delaware River and Bay by the financing, development, construction, operation, and maintenance of crossings, transportation, or terminal facilities, and other faciilties of commerce, and by providing for overall planning for the future economic development of those areas; and

"Whereas the economic growth and development of areas of both States will be further advanced by authorizing the Authority to undertake economic development projects, other than major projects, as defined in Article II, at its own initiative, and to undertake major projects after securing only such approvals as may be required by legislation of the State in which the project is to be located, except that the Authority is prohibited from undertaking any major project, to be located in the Delaware River or Bay, including, without limitation, any deep-water port or superport, without the prior approval, by concurrent legislation, of the two States; and

"Whereas the natural environment of those areas in the two States which border the Delaware River and Bay would be better preserved by requiring that the projects, other than crossings, of the Authority shall be in complete compliance with all applicable environmental protection laws and regulations before the Authority may undertake the planning, development, construction, or operation of any project, other than a crossing:

"NOW, THEREFORE, the State of Delaware and the State of New Jersey do hereby solemnly covenant and agree, each with the other as follows:

"ARTICLE I

"SHORT TITLE

"This Compact shall be known as the 'Delaware-New Jersey Compact'.

"ARTICLE II

"DEFINITIONS

" 'Crossing' means any structure or facility adapted for public use in crossing the Delaware River or Bay between the States, whether by bridge, tunnel, ferry, or other device, and by any vehicle or means of transportation of persons or property, as well as all approaches thereto and connecting and service routes and all appurtenances and equipment relating thereto.

" 'Transportation facility' and 'terminal facility' means any structure or facility other than a crossing, as herein defined, adapted for public use within each of the States party hereto in connection with the transportation of persons or property, including railroads, motor vehicles, watercraft, airports and aircraft, docks, wharves, piers, slips, basins, storage places, sheds, warehouses, and every means or vehicle of transportation now or hereafter in use for the transportation of persons and property or the storage, handling or loading of property, as well as all appurtenances and equipment related thereto.

" 'Commerce facility or development' means any structure or facility adapted for public use or any development for a public purpose within each of the States party hereto in connection with recreational and commercial fishery development, recreational marina development, aquaculture (marine farming), shoreline preservation and development (including wetlands and open-lands acquisition, active recreational and park development, beach restoration and development, dredge spoil disposal and port-oriented development), foreign trade zone site develop-

ment, manufacturing and industrial facilities, and other facilities of commerce which, in the judgment of the Authority, are required for the sound economic development of the area.

" 'Appurtenances' and 'Equipment' mean all works, buildings, structures, devices, appliances, and supplies, as well as every kind of mechanism, arrangement, object, or substance related to and necessary or convenient for the proper construction, equipment, maintenance, improvement, and operation of any crossing, transportation facility or terminal facility, or commerce facility, or development.

" 'Project' means any undertaking or program for the acquisition or creation of any crossing, transportation facility or terminal facility, or commerce facility or development, or any part thereof, as well as for the operation, maintenance, and improvement thereof.

" 'Major Project' means any project, other than a crossing, having or likely to have significant environmental impacts on the Delaware River and Bay, its shorelines or estuaries, or any other area in the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester, and Salem, as determined in accordance with State law by the environmental agency of the State in which the major project is to be located.

" 'Tunnel' means a tunnel for one or more tubes.

" 'Governor' means any person authorized by the Constitution and law of each State to exercise the functions, powers, and duties of that office.

" 'Authority' means the Authority created by this Compact or any agency successor thereto.

"The singular whenever used in this Compact shall include the plural, and the plural shall include the singular.

"ARTICLE III

"FAITHFUL COOPERATION

"They agree to and pledge, each to the other, faithful cooperation in the effectuation of this Compact and any future amendment or supplement thereto, and of any legislation expressly in implementation thereof hereafter enacted, and in the planning, development, financing, construction, operation, maintenance, and improvement of all projects entrusted to the authority created by this Compact.

"ARTICLE IV

"ESTABLISHMENT OF AGENCY; PURPOSES

"The two States agree that there shall be created and they do hereby create a body politic, to be known as "The Delaware River and Bay Authority' (for brevity hereinafter referred to as the 'Authority') which shall constitute an agency of government of the State of Delaware and the State of New Jersey for the following general public purposes, and which shall be deemed to be exercising essential government functions in effectuating such purposes, to wit:

"(a) The planning, financing, development, construction, purchase, lease, maintenance, improvement, and operation of crossings between the States of Delaware and New Jersey across the Delaware River or Bay at any location south of the boundary line between the State of Delaware and the Commonwealth of Pennsylvania as extended across the Delaware River to the New Jersey shore of said River, together with such approaches or connections thereto as in the judgment of the Authority are required to make adequate and efficient connections between such crossings and any public highway or other routes in the State of Delaware or in the State of New Jersey; and

"(b) The planning, financing, development, construction, purchase, lease, maintenance, improvement, and operation of any transportation or terminal facility within the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester, and Salem, which facility, in the judgment of the Authority, is required for the sound economic development of the area; and

"(c) The planning, financing, development, construction, purchase, lease, maintenance, improvement, and operation of any commerce facility or development within the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester, and Salem, which in the judgment of the Authority is required for the sound economic development of the area; and

"(d) The performance of such other functions as may be hereafter entrusted to the Authority by concurrent legislation expressly in implementation hereof.

"The Authority shall not undertake any major project or part thereof without having first secured such approvals as may be required by legislation of the State in which the project is to be located.

"The Authority shall not undertake any major project, or part thereof to be located in the Delaware River or Bay, including, without limitation, any deep-water port or superport, without having first secured approval thereof by concurrent legislation of the two States expressly in implementation thereof.

"The Authority shall not undertake any major project or part thereof without first giving public notice and holding a public hearing, if requested, on any proposed major project, in accordance with the law of the State in which the major project is to be located. Each State shall provide by law for the time and manner for the giving of such public notice, the requesting of a public hearing and the holding of such public hearings.

"ARTICLE V

"COMMISSIONERS

"The Authority shall consist of twelve Commissioners, six of whom shall be residents of and qualified to vote in and shall be appointed from the State of Delaware, and six of whom shall be residents of and qualified to vote in and shall be appointed from the State of New Jersey; not more than three of the Commissioners of each State shall be of the same political party; the Commissioners for each State shall be appointed in the manner fixed and determined from time to time by the law of each State respectively. Each Commissioner shall hold office for a term of five years, and until his successor shall have been appointed and qualified, but the terms of the first Commissioners shall be so designated that the term of at least one Commissioner from each State shall expire each year. All terms shall run to the first day of July. Any vacancy, however created, shall be filled for the unexpired term only. Any Commissioner may be suspended or removed from office as provided by law of the State from which he shall be appointed.

"Commissioners shall be entitled to reimbursement for necessary expenses to be paid only from revenues of the Authority and may not receive any other compensation for services to the Authority except such as may from time to time be authorized from such revenues by concurrent legislation.

"ARTICE VI

"BOARD ACTION

"The Commissioners shall have charge of the Authority's property and affairs and shall, for the purpose of doing business, constitute a Board, but no action of the Commissioners shall be binding or effective unless taken at a meeting at which at least four Commissioners from each State are present, and unless at least four Commissioners from each State shall vote in favor thereof. The

vote of any one or more of the Commissioners from each State shall be subject to cancellation by the Governor of such State at any time within 10 days (Saturdays, Sundays, and public holidays in the particular State excepted) after receipt at the Governor's office of a certified copy of the minutes of the meeting at which such vote was taken. Each State may provide by law for the manner of delivery of such minutes and for notification of action thereon.

"ARTICLE VII

"GENERAL POWERS

"For the effectuation of its authorized purposes, the Authority is hereby granted the following powers:

"(a) To have perpetual succession.

"(b) To adopt and use an official seal.

"(c) To elect a chairman and a vice chairman from among the Commissioners. The chairman and vice chairman shall be elected from different States and shall each hold office for two years. The chairmanship and vice chairmanship shall be alternated between the two States.

"(d) To adopt bylaws to govern the conduct of its affairs by the Board of Commissioners, and it may adopt rules and regulations and may make appropriate orders to carry out and discharge its powers, duties, and functions, but no bylaw or rule, regulation, or order shall take effect until it has been filed with the Secretary of State of each State or in such other manner in each State as may be provided by the law thereof. In the establishment of rules, regulations, and orders respecting the use of any crossing, transportation, or terminal facility or commerce facility or development owned or operated by the Authority, including approach roads, it shall consult with appropritae officials of both States in order to insure, as far as possible, uniformity of such rules, regulations, and orders with the laws of both States.

"(e) To appoint or employ such other officers, agents, attorneys, engineers, and employees as it may require for the performance of its duties and to fix and determine their qualifications, duties, compensation, pensions, terms of office and all other conditions and terms of employment and retention.

"(f) To enter into contracts and agreements with either State or with the United States, or with any public body, department, or other agency of either State or of the United States or with any individual, firm, or corporation deemed necessary or advisable for the exercise of its purposes and powers.

"(g) To accept from any government or governmental department, agency, or other public or private body, or from any other source, grants, or contributions of money or property as well as loans, advances, guarantees, or other forms of financial assistance which it may use for or in aid of any of its purposes.

"(h) To acquire (by gift, purchase, or condemnation), own, hire, lease, use, operate, and dispose of property, whether real, personal, or mixed, or of any interest therein, including any rights, franchise and property for any crossing, facility, or other projects owned by another and which the Authority is authorized to own and operate.

"(i) To designate as express highways, and control public and private access thereto, all or any approaches to any crossing or other facility of the Authority for the purpose of connecting the same with any highway or other route in either State.

"(j) To borrow money and to evidence such loans by bonds, notes, or other obligations, either secured or unsecured, and either in registered or unregistered form, and to fund or refund such evidences of indebtedness, which may be executed with facsimile signatures of such persons as may be designated by the Authority and by a facsimile of its corporate seal.

"(k) To procure and keep in force adequate insurance or otherwise provide for the adequate protection of its property, as well as to indemnify it or its officers, agents, or employees against loss or liability with respect to any risk to which it or they may be exposed in carrying out any function hereunder.

"(l) To grant the use of by franchise, lease, or otherwise, and to make charges for the use of any crossing, facility, or other project or property owned or controlled by it.

"(m) To exercise the right of eminent domain to acquire any property or interest therein.

"(n) To determine the exact location, system, and character of and all other matters in connection with any and all crossings, transportation, or terminal facilities, commerce facilities or developments or other projects which it may be authorized to own, construct, establish, effectuate, operate, or control.

"(o) To exercise all other powers not inconsistent with the Constitutions of the two States or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, except the power to levy taxes or assessments, and generally to exercise in connection with its property and affairs, and in connection with property within its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.

"ARTICLE VIII

"ADDITIONAL POWERS

"For the purpose of effectuating the authorized purposes of the Authority, additional powers may be granted to the Authority by legislation of either State without the concurrence of the other, and may be exercised within such State, or may be granted to the Authority by Con-

gress and exercised by it; but no additional duties or obligations shall be undertaken by the Authority under the law of either State or of Congress without authorization by the law of both States.

"ARTICLE IX

"EMINENT DOMAIN

"If the Authority shall find and determine that any property or interest therein is required for a public use in furtherance of the purposes of the Authority, said determination shall not be affected by the fact that such property has theretofore been taken over or is then devoted to a public use, but the public use in the hands or under the control of the Authority shall be deemed superior to the public use for which it has theretofore been taken or to which it is then devoted. The Authority shall not exercise the power of eminent domain granted herein to acquire any property, other than a crossing, devoted to a public use, of either State, or of any municipality, local government, agency, public authority or commission, or of two or more of them, for any purpose other than a crossing, without having first secured the authorization of the holder of the title to the land in question and such other approvals as may be required by legislation of the State in which the project is to be located. The Authority shall not exercise the power of eminent domain in connection with any commerce facility or development.

"In any condemnation proceedings in connection with the acquisition by the Authority of property or property rights of any character in either State and the right of inspection and immediate entry thereon, through the exercise by it of its power to eminent domain, any existing or future law or rule of court of the State in which such property is located with respect to the condemnation of property for the construction, reconstruction, and maintenance of highways therein shall control. The Authority shall have the same power and authority with respect

thereto as the State agency named in any such law, provided that nothing herein contained shall be construed as requiring joint or concurrent action by the two States with respect to the enactment, repeal, or amendment of any law or rule of court on the subject of condemnation under which the Authority may proceed by virtue of this Article.

"If the established grade of any street, avenue, highway, or other route shall be changed by reason of the construction by the Authority of any work so as to cause loss or injury to any property abutting on such street, avenue, highway, or other route, the Authority may enter into voluntary agreements with such abutting property owners and pay reasonable compensation for any loss or injury so sustained, whether or not it be compensable as damages under the condemnation law of the State.

"The power of the Authority to acquire property by condemnation shall be a continuing power, and no exercise thereof shall be deemed to exhaust it.

"ARTICLE X

"REVENUE AND APPLICATION

"The Authority is hereby authorized to establish, levy, and collect such tolls and other charges as it may deem necessary, proper, or desirable in connection with any crossing, transportation, or terminal facility, commerce facility or development or other project which it is or may be authorized at anytime to construct, own, operate, or control, and the aggregate of said tolls and charges shall be at least sufficient (1) to meet the combined expenses of operation, maintenance and improvement thereof, (2) to pay the cost of acquisition or construction, including the payment, amortization, and retirement of bonds or other securities or obligations assumed, issued, or incurred by the Authority, together with interest thereon, and (3) to provide reserves for such purposes; and the Authority is hereby authorized and empowered, subject to prior

pledges, if any, to pledge such tolls and other revenues or any part thereof as security for the repayment with interest of any moneys borrowed by it or advanced to it for its authorized purposes and as security for the satisfaction of any other obligations assumed by it in connection with such loans or advances. There shall be allocated to the cost of the acquisition, construction, operation, maintenance, and improvement of such facilities and projects such proportion of the general expenses of the Authority as it shall deem properly chargeable thereto.

"ARTICLE XI

"COVENANT WITH BONDHOLDERS

"The two said States covenant and agree with each other and with the holders of any bonds or other securities or obligations of the Authority, assumed, issued, or incurred by it and as security for which there may be pledged the tolls and revenues or any part thereof of any crossing, transportation, or terminal facility, commerce facility or development or other project, that the two said States will not, so long as any of such bonds or other obligations remain outstanding and unpaid, diminish, or impair the power of the Authority to establish, levy, and collect tolls and other charges in connection therewith, and that neither of the two said States will, so long as any of such bonds or other obligations remain outstanding and unpaid, authorize any crossing of the Delaware River or Delaware Bay south of the line mentioned in Article IV(a) of this Compact by any person or body other than the Authority, unless, in either case, adequate provision shall be made by law for the protection of those advancing money upon such obligations.

"ARTICLE XII

"SECURITIES LAWFUL INVESTMENTS

"The bonds or other securities or obligations which may be issued by the Authority pursuant to this Compact, or any amendments hereof or supplements hereto, are hereby declared to be negotiable instruments, and are hereby made securities in which all State and municipal officers and bodies of each State, all banks, bankers, trust companies, savings banks, building and loan associations, saving and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees, and other fiduciaries and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of either State may properly and legally invest any funds, including capital, belonging to them or within their control, and said obligations are hereby made securities which may properly and legally be deposited with and shall be received by any State or municipal officer or agency of either State for any purpose for which the deposit of bonds or other obligations of such State is now or may hereafter be authorized.

"ARTICLE XIII

"TAX STATUS

"The powers and functions exercised by the Authority under this Compact and any amendments hereof or supplements hereto are and will be in all respects for the benefit of the people of the States of Delaware and New Jersey, the region and Nation, for the increase of their commerce and prosperity and for the enhancement of their general welfare. To this end, the Authority shall be regarded as performing essential governmental functions in exercising such powers and functions and in carrying out the provisions of this Compact and of any law relating

thereto, and shall not be required to pay any taxes or assessments of any character, levied by either State or political subdivision thereof, upon any of the property used by it for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange. The bonds or other securities or obligations issued by the Authority, their transfer and the interest paid thereon or income therefrom, including any profit from a sale or exchange, shall at all times be free from taxation by either State or any subdivision thereof.

"ARTICLE XIV

"JURISDICTION; USE OF LANDS

"Each of the two States hereby consents to the use and occupancy by the Authority of any lands and property of the Authority in such State for the construction, operation, maintenance or improvement of any crossing, transportation, or terminal facility, commerce facility or development, or other project which it is or may be authorized at any time to construct, own, or operate, including lands lying under water.

"ARTICLE XV

"REVIEW AND ENFORCEMENT OF RULES

Judicial proceedings to review any bylaw, rule, regulation, order, or other action of the Authority or to determine the meaning or effect thereof may be brought in such court of each State, and pursuant to such law or rules thereof, as a similar proceeding with respect to any agency of such State might be brought.

"Each State may provide by law what penalty or penalties shall be imposed for violation of any lawful rule, regulation, or order of the Authority, and, by law or rule of court, for the manner of enforcing the same.

"ARTICLE XVI

"NO PLEDGE OF CREDIT

"The Authority shall have no power to pledge the credit or to create any debt or liability of the State of Delaware, of the State of New Jersey or of any other agency or of any political subdivision of said States.

"ARTICLE XVII

"LOCAL COOPERATION AND AGREEMENTS

"(a) All municipalities, political subdivisions, and every department, agency, or public body of each of the States are hereby authorized and empowered to cooperate with, aid and assist the Authority in effectuating the provisions of this Compact and of any amendment hereof or supplement hereto.

"(b) The Authority is authorized and empowered to cooperate with each of the States, or any political subdivision thereof, and with any municipality, local government, agency, public authority or commission of the foregoing, in connection with the acquisition, planning, rehabilitation, construction or development of any project, other than a crossing, and to enter into an agreement or agreements, subject to compliance with the laws of the State in which the project is to be located, with each of the States, or any political subdivision thereof, and with any municipality, county, local government, agency, public authority, or commission or with two or more of them, for, or relating to such purposes.

"(c) The Authority and the city, town, municipality, or other political subdivision in which any project, other than a crossing, is to be located are hereby authorized and empowers, subject to compliance with the laws of the State in which the project is to be located, to enter into an agreement or agreements to provide which local laws, resolutions, ordinances, rules, and regulations, if any, of the city, town, municipality, or other political subdivision

affected by such project shall apply to such project. All other existing local laws, resolutions, ordinances or rules and regulations not provided for in the agreement shall be applicable to the project, other than a crossing. All local laws, resolutions, ordinances or rules and regulations enacted after the date of the agreement shall not be applicable to such projects unless made applicable by the agreement or any modification thereto.

"ARTICLE XVIII

"DEPOSITARIES

"All banks, bankers, trust companies, savings banks and other persons carrying on a banking business under the laws of either State are authorized to give security for the safekeeping and prompt payment of moneys of the Authority deposited by it with them, in such manner and form as may be required by and may be approved by the Authority, which security may consist of a good and sufficient undertaking with such sureties as may be approved by the Authority, or may consist of the deposit with the Authority or other depository approved by the Authority as collateral of such securities as the Authority may approve.

"ARTICLE XIX

"AGENCY POLICE

"Members of the police force established by the Authority, regardless of their residence, shall have in each State, on the crossings, transportation or terminal facilities, commerce facilities or developments and other projects and the approaches thereto, owned, operated, or controlled by the Authority, and at such other places and under such circumstances as the law of each State may provide, all the powers of investigation, detention, and arrest conferred by law on peace officers, sheriffs, or constables in such State or usually exercised by such officers in each State.

"ARTICLE XX

"REPORTS AND AUDITS

"The Authority shall make annual reports to the Governors and Legislatures of the State of Delaware and the State of New Jersey, setting forth in detail its operations and transactions, and may make such additional reports from time to time to the Governors and Legislatures as it may deem desirable.

"It shall, at least annually, cause an independent audit of its fiscal affairs to be made, and shall furnish a copy of such audit report together with such additional information or data with respect to its affairs as it may deem desirable to the Governors and Legislatures of each State.

"It shall furnish such information or data with respect to its affairs as may be requested by the Governor or Legislature of each State.

"ARTICLE XXI

"BOUNDARIES UNAFFECTED

"The existing territorial or boundary lines of the States or the jurisdiction of the two States established by said boundary lines shall not be changed hereby.

"ARTICLE XXII

"ENVIRONMENTAL PROTECTION

"(a) The planning, development, construction, and operation of any project, other than a crossing, shall comply with all environmental protection laws, regulations, directives, and orders, including, without limitation, any coastal zone laws, wetlands law, or subaqueous land laws or natural resources laws, now or hereinafter enacted, or promulgated by the State in which the project, or any part thereof, is located.

"(b) The planning, development, construction, and operation of any project, other than a crossing, to be located in the Delaware River and Bay shall comply with all environmental protection laws, regulations, directives, and orders, including, without limitation, any coastal zone laws, wetlands laws, subaqueous land laws or natural resource laws now or hereinafter enacted or promulgated by either State.

"(c) The planning, development, construction, and operation of any project, other than a crossing, located in the coastal zone of Delaware (as defined in Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989), shall be subject to the same limitations, requirements, procedures, and appeals as apply to any other person under the Delaware Coastal Zone Act, Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989. Nothing in this Compact shall be deemed to preempt, modify, or supersede any provision of the Delaware Coastal Zone Act, Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989. The interpretation and application of this paragraph shall be governed by the laws of the State of Delaware and be determined by the courts of the State of Delaware.

"(d) The planning, development, construction, and operation of any project, other than a crossing, located in New Jersey, shall be subject to the provisions of New Jersey law, when applicable, including but not limited to the Wetlands Act of 1970, N.J.S.A. 13:9A-1, et seq. and the Coastal Area Facility Review Act, N.J.S.A. 13:19-1, et seq.".

SEC. 2. FEDERAL JURISDICTION NOT AFFECTED.

Nothing contained in the compact set forth in section 1 shall be construed as impairing or in any manner affecting any right or jurisdiction of the United States in and over the area which forms the subject of such compact.

SEC. 3. AUTHORITY FOR ADDITIONAL TOLL BRIDGES.

Section 4 of the Act entitled "An Act to authorize the State of Delaware, by and through its State highway department, to construct, maintain, and operate a toll bridge across the Delaware River near Wilmington, Delaware" approved July 13, 1946 (60 Stat. 533), as amended by the Act of June 27, 1951 (65 Stat. 91) and the Act of October 3, 1962 (76 Stat. 741-742), is amended—

(1) by striking "and" at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting "; and"; and

(3) by adding after paragraph (4) the following:

"(5) to pay the cost of any project which the Delaware River and Bay Authority is or may be authorized to construct, own, operate, or control, under the Delaware-New Jersey Compact, as consented to by the Congress.".

SEC. 4. REQUIREMENTS OF OTHER LAWS.

In addition to any other requirement of law, any project constructed by the Delaware River and Bay Authority in and over the navigable waters of the United States shall be subject to the procedural requirements of section 2(a) of the Fish and Wildlife Coordination Act (16 U.S.C. 662(a)).

SEC. 5. CONSTRUCTION.

Nothing in this resolution shall be construed as—

(1) amending or superseding the provisions of the Act of September 27, 1961 (75 Stat. 688); or

(2) granting advance consent of Congress for the performance by the Delaware River and Bay Authority of other functions, as contemplated by Article

IV, paragraph (d) of the compact set forth in section 1 or for the assumption by the Authority of additional powers, as contemplated by Article VIII of such compact.

SEC. 6. DISCLOSURE OF INFORMATION.

The right is reserved to the Congress or any of its standing committees to require of the Delaware River and Bay Authority the disclosure and furnishing of such information and data as is deemed appropriate by the Congress or any committee thereof having jurisdiction of the subject matter of this resolution.

SEC. 7. RESERVATION BY THE CONGRESS.

The right to alter, amend, or repeal this joint resolution is expressly reserved.

Approved November 15, 1990.

(2)
Supreme Court, U.S.
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No. 97 OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

THE DELAWARE RIVER AND BAY AUTHORITY,

Petitioner,

v.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 68, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

BRIEF *AMICUS CURIAE* OF THE WATERFRONT COMMISSION OF NEW YORK HARBOR IN SUPPORT OF PETITIONER

GERALD P. LALLY
GENERAL COUNSEL

DAVID B. GREENFIELD
ASSISTANT GENERAL COUNSEL

Waterfront Commission of
New York Harbor
42 Broadway
New York, New York 10004
(212) 742-9280

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IN THE

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OCTOBER TERM, 1997

THE DELAWARE RIVER AND BAY AUTHORITY,
Petitioner,

v.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 68, et al.,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

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BRIEF *AMICUS CURIAE* OF THE WATERFRONT COMMISSION OF NEW YORK HARBOR IN SUPPORT OF PETITIONER

INTEREST OF THE *AMICUS CURIAE* WATERFRONT COMMISSION OF NEW YORK HARBOR

Like the Delaware River and Bay Authority (DRBA), the Waterfront Commission of New York Harbor (Waterfront Commission)[1] is a bi-state agency established pursuant to the

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[1] Counsel for the respondents has consented to the filing of this brief. A letter of consent will be filed with the Clerk of the Supreme Court simultaneously with the filing of this brief.

Compact Clause of the Constitution. The Waterfront Commission is a body corporate and politic and an instrumentality of the States of New Jersey and New York (New Jersey Laws of 1953, c. 202 (N.J.S.A. 32:23-1 and following); New York Laws of 1953, c. 882 (McK. Unconsol. Laws, Sec. 9801 and following) approved by the Congress of the United States (Public Law 252, c. 407, 83rd Cong. 1st Sess.)) created for the purpose of eliminating racketeering and other criminal, corrupt and evil conditions on the waterfront in the Port of New York District, which had been publicly exposed by the New York State Crime Commission, the New Jersey Law Enforcement Council and other investigative bodies.

The Waterfront Commission fully supports the Petition for Certiorari filed by the DRBA because the decision of the Supreme Court of New Jersey in this case contravenes established law concerning interstate agencies and conflicts with the New York high court's decision in *Malverty* v. *Waterfront Commission of New York Harbor*, 71 N.Y. 2d 977, 529 N.Y.S. 2d 67, *rearg. den.* 72 N.Y. 2d 910, 532 N.Y.S. 2d 758 (1988) and, in the words of the DRBA at page 22 of its Petition, "creates enormous confusion and uncertainty as to which particular laws apply to interstate authorities" such as the Waterfront Commission.

SUMMARY OF ARGUMENT

Under established Compact Clause principles, any amendment to an interstate compact established pursuant to the Compact Clause of the Constitution must be accomplished by specific legislation enacted by the compacting states. Similar legislation or policy from the compacting states that is not specifically made applicable to the particular bi-state agency is not and cannot be binding upon the agency. This rule was expressly recognized by New York's Court of Appeals in *Malverty v. Waterfront Commission of New York Harbor*, 71 N.Y. 2d 977,

529 N.Y.S. 2d 67, *rearg. den.* 72 N.Y. 2d 910, 532 N.Y.S. 2d 758 (1988). The diametrically opposite holding of the Supreme Court of New Jersey in the instant case places the Waterfront Commission, an instrumentality of New York and New Jersey, in an untenable position. In New Jersey, the Waterfront Commission may be subjected to any number of additional obligations or duties merely implied by courts from the general laws or policies of the compact states. In New York, however, the Commission may not be subjected to such implied obligations or duties. The conflicting obligations placed on this Commission in each state will result in conflict and confusion, and thus threaten the important regulatory and law enforcement mission entrusted to the Waterfront Commission by the compact states and Congress.

ARGUMENT

DRBA'S PETITION FOR CERTIORARI SHOULD BE GRANTED

A. *Powers And Functions Of The Waterfront Commission*

To combat racketeering and other invidious criminal activities on the waterfront of New York harbor, as catalogued in the Waterfront Commission Compact (*see e.g.* N.J.S.A. 32:23-2 through 5; McK. Unconsol. Laws, Secs. 9802 through 9805), the states of New York and New Jersey formed the Waterfront Commission as a bi-state agency through a compact approved by Congress. The Commission is empowered by identical legislation enacted by New Jersey and New York to combat crime and corruption by, among other things, registering and licensing various categories of dock workers and firms engaged in stevedoring activities along the waterfront in both New York and New Jersey. The agency exercises wide regulatory and criminal

investigatory and subpoena powers throughout New York and New Jersey and maintains a force of law enforcement offieers who have full police powers in both jurisdictions. The Waterfront Commission is also empowered to remove certain convicted waterfront union officials, agents and employees from office on both sides of the Hudson River pursuant to Section 8 of the Waterfront Commission Act. (N.J.S.A. 32:23-80, 80.2, McK. Unconsol. Laws, Sec. 9933. See *Carson v. Waterfront Commission*, 73 F. 3d 24 (3rd Cir. 1995), *cert.* den ___U.S.___, 116 S.Ct. 1828 (1996); *Local 1804, Longshore Ass'n v. Waterfront Commission*, 85 N.J. 606 (1981)). In fulfilling its Congressionally-authorized mission, the Waterfront Commission and its employees have combated numerous types of corruption and criminal activity in New York and New Jersey.

B. *Any Amendment To The Waterfront Commission Compact Must Be Accomplished By Specific Legislation Enacted By Both New Jersey And New York*

Like the DRBA Compact, (Article VIII, Petition, pp. 80a and 81a), neither New Jersey nor New York can unilaterally amend the Waterfront Commission Compact. Thus, Article XVI, Section 1 of the Waterfront Commission Compact provides that:

> Amendments and supplements to this compact to implement the purposes thereof may be adopted **by the action of the Legislature of either State concurred in by the Legislature of the other.** [N.J.S.A. 32:23-70; McK. Unconsol. Laws, Sec. 9870] (emphasis added).

The compacting States have carefully adhered to this process. For example, the agency's authority to grant immunity (N.J.S.A. 32:23-86 (5), McK. Unconsol. Laws, Sec. 9906 (5)),

was authorized by both states subsequent to the enactment of the Compact. As noted by the Supreme Court of New Jersey in *In re Application of Waterfront Comm. of N.Y. Harbor*, 39 N.J. 436, 452 (1963), *aff'd in part and vacated in part Murphy v. Waterfront Com'n of New York Harbor*, 378 U.S. 52 (1964):

> The immunity subdivision quoted above was enacted in 1956 in New Jersey (L. 1956, c. 194) and in 1957 in New York (New York Laws 1957, 188) as an agreement between the two States supplementary to the Waterfront Commission Compact and amendatory thereof. This legislation was enacted pursuant to the provisions of Article XVI, Section 1 of the Compact empowering the Legislature of either State, when concurred in by the Legislature of the other, to enact amendments and supplements to the Compact. N.J.S.A. 32:23-70. Thus, the immunity subdivision is in effect a part of the original Waterfront Commission Compact, to which Congress gave its consent.

Thus, as is true with respect to the DRBA Compact, to effectively bind the Waterfront Commission, amendments and supplements to the Waterfront Commission Compact must be enacted by conscious and deliberate acts of the legislatures of both States. Absent the above-noted specific legislative authority to grant immunity, the general statutory immunity provisions of both states could not be applied to the Waterfront Commission. See N.J.S.A. 2A:81-17.3 (Order compelling person to testify or produce evidence; immunity from use of such evidence; contempt) and Article 50, McK. Criminal Procedure Law (Compulsion of Evidence by Offer of Immunity).

The foregoing principle is clearly supported by the opinion of New York's Court of Appeals in *Malverty v. Waterfront Commission of New York Harbor*. In *Malverty,* the appellant, a dockworker whose registration had been revoked by the Waterfront Commission, contended that the agency erroneously ignored the relevant provisions of Article 23-A of New York's Correction Law relating to the employment of former inmates. He argued in his Motion for Leave to Appeal that since both New York and New Jersey enacted laws prohibiting discrimination in employment against rehabilitated convicted offenders, the Commission, as a creature of the compacting states, was required to abide by this public policy of the two states.

The Court of Appeals flatly disagreed and held that the provisions of New York's Article 23-A do not apply to the Waterfront Commission even though New Jersey evinced the same or similar public policy regarding employment opportunities for former inmates. New York's high court recognized that:

> The Waterfront Commission was established by Interstate Compact, approved by Congress (67 U.S. Stat. 541) ***
>
> New York and New Jersey have agreed, and Congress has authorized the two States to amend and supplement the Interstate Compact, to implement the purposes thereof, by legislative action of either State concurred in by legislative action of the other State (McKinney's Uncons. Laws of N.Y. Sec. 9870). Pursuant to sections 9806 and 9905(7), the "Compact" between the two States includes the Interstate Compact approved by Congress and any duly enacted amendments or any supplements thereto. In the past, the New York Legislature has expressly

stated that certain legislation was amending a certain portion of the "Compact" and that the new law would take effect upon the enactment into law by New Jersey of legislation having an effect identical to New York's legislation, unless New Jersey had already done so, in which case the amendment would take effect immediately.

In the present case, the absence from the text and legislative history of article 23-A of any reference to the Waterfront Commission, coupled with the absence of an express statement that the Legislature was amending or supplementing the provisions of the "Compact" and that article 23-A would take effect upon the enactment by New Jersey of legislation of identical effect, if it had not already done so, indicates that the New York Legislature never intended article 23-A to apply to the Waterfront Commission. **That the two States have evinced the same or similar, public policy regarding employment opportunities for former inmates by enacting similar "antidiscrimination" laws (see NJ. Stat. Annot. Sec. 2A:168A-1 et seq. ["Rehabilitated Convicted Offenders Act"]) is not sufficient under the express terms of the "Compact" to render it properly amended or supplemented such that the Commission would be subject to the provisions of article 23-A.** Respondent, therefore, did not err in failing to apply article 23-A in denying petitioner's application for restoration of his checker registration. 529 N.Y.S. 2d at 68 (emphasis added).

Thus, the high courts of New York and New Jersey have reached opposite results after considering the issue presented by this case. These completely opposite determinations from the highest courts of the respective compacting states present the real potential of wreaking havoc with the orderly operations of the Waterfront Commission's regulatory and law enforcement mission. For example, because Mr. Malverty sued the Commission in New York, the agency was not required to consider New York's statutory scheme pertaining to "rehabilitated convicted offenders" in determining whether to grant his petition to restore his checker's registration. Given the determination of the New Jersey Supreme Court in the within matter, however, a suit instituted by Mr. Malverty in New Jersey, could have resulted in a completely opposite determination, that is, the obligation upon the Waterfront Commission to consider New Jersey's Rehabilitated Convicted Offenders Act in respect to Mr. Malverty's petition for restoration. The Waterfront Commission is now left to guess which laws govern its licensing decisions—a matter that directly threatens the Commission's ability to conduct its important regulatory and law enforcement mission.

C. *Other Practical Considerations Illustrate The Conflicts Caused By The New Jersey High Court's Decision.*

1. The conflicting decisions of the New Jersey Supreme Court in this case and the New York high court in *Malverty* create substantial problems for the Waterfront Commission. For example, the Commission licenses port watchmen which are defined to include:

> any watchman, gateman, roundsman, detective, guard, guardian or protector of property employed by the operator of any pier or other waterfront terminal or by a carrier of freight by water to perform services in such capacity on any pier

> or other waterfront terminal. (N.J.S.A. 32:23-6; McK. Unconsol. Laws, Sec. 9806).

Pursuant to statutory authorization the Waterfront Commission has enacted comprehensive regulations concerning physical and mental fitness standards for port watchmen as well as standards of conduct and requirements to be observed by port watchmen. See N.J.S.A. 32:23-10 (7); McK. Unconsol. Laws, Sec. 9810 (7), 19 N.J.A.C., Subdiv AA.Secs 5.5 through 5.19, 21 N.Y.C.R.R., Secs. 5.5 through 5.19.

In 1992, New York enacted its Security Guard Act to address issues relating to security guards working in New York. McK. General Business Law, Secs. 89-e to 89-w. Although legislation has been introduced in the New Jersey Legislature concerning the licensing of certain security officers and the registration of their employers, that legislation contains significant differences from the New York law. It should be noted that the Waterfront Commission was exempted from New York's Security Guard Act by administrative determination and that the New Jersey proposed legislation has been amended to exempt the agency. But for these exemptions, since the Waterfront Commission licenses pier guards who are employed in New Jersey and in New York, a myriad of problems could arise if the New Jersey Supreme Court's decision is left to stand and the Waterfront Commission is required to abide by security guard legislation enacted by both states.

2. Like the DRBA, the Waterfront Commission is authorized pursuant to the provisions of its Compact:

> To appoint such officers, agents and employees as it may deem necessary, prescribe their powers, duties and qualifications and fix their compensation and retain and employ counsel and private consultants on a contract basis or other-

wise; N.J.S.A. 32:23-10(5), McK. Unconsol. Laws, Sec. 9810(5).

The Waterfront Commission has recognized that New Jersey and New York have enacted comprehensive and different civil service laws governing , among many other things, the appointment, disciplining and removal of their respective state employees. See N.J.S.A.11A:1-1 et seq., McK. Civil Service Law, Sec. 1 et seq. Those laws do not cover employees of the bi-state Waterfront Commission since they specifically do not amend the Waterfront Commission Compact. Given the differences in the laws, such coverage, if it existed, would prove to be an administrative nightmare. However, under the reasoning of the New Jersey high court in this case, because the compacting states have enacted similar civil service laws or have recognized similar policies, the New Jersey courts are vested with the authority to imply numerous additional duties and obligations upon the Commission with respect to its employees. This result is not sanctioned by the Waterfront Commission Compact or the jurisprudence governing interstate compacts.

3. Moreover, the procedural requirements set forth in the Waterfront Commission Compact which empower the agency to hold administrative hearings to determine whether to grant or deny applications for registrations and licenses or to determine whether to revoke, cancel or suspend registrations and licenses differ from the requirements of New Jersey's Administrative Procedures Act and New York's Administrative Procedures Act. But for the fact that interstate agencies are specifically exempted from the operation of New York's act (Section 102(1)), the New Jersey high court's ruling implies that the Waterfront Commission may be required to comply with New Jersey's Administrative Procedures Act, even though the Compact explicitly provides the rules applicable to administrative hearings at the Waterfront Commission. The Waterfront Commission should not be burdened with determining which state laws

might apply to the agency, particularly where state law would augment, or contravene, the Commission's obligations pursuant to its Compact.

***

Before the Waterfront Commission is presented with such confusion and uncertainty, this Court should grant certiorari and resolve the conflict between the directly contrary rulings of the New York and New Jersey high courts as to the manner in which additional duties or obligations may be imposed upon a bi-state entity established pursuant to the Compact Clause with the consent of Congress.

CONCLUSION

The Waterfront Commission fully agrees with the DRBA that "because of the direct conflict of authority **[including *Malverty's* conflict with this matter]** and overriding importance of the question presented, this case plainly meets the Court's conventional criteria for certiorari." Because "this case involves a dispute concerning the construction and governance of an interstate compact—bearing directly on the construction and governance of numerous other interstate compacts **[including the Waterfront Commission Compact]**—[there is also] another, independently compelling reason to grant the writ."

For all of the foregoing reasons, the *Amicus Curiae* Waterfront Commission of New York Harbor, respectfully urges this Court to grant the DRBA's Petition for Certiorari.

Respectfully submitted,

Gerald P. Lally
General Counsel

David B. Greenfield
Assistant General Counsel

Waterfront Commission of
New York Harbor
42 Broadway
New York, New York 10004
(212) 742-9280

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No. 97-81

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

THE DELAWARE RIVER AND BAY AUTHORITY,
Petitioner,
v.
INTERNATIONAL UNION OF OPERATING ENGINEERS,
LOCAL 68, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

---

BRIEF IN OPPOSITION

RAYMOND G. HEINEMAN *
KROLL & HEINEMAN
300 Executive Drive, Suite 010
West Orange, New Jersey 07052
(973) 243-0100

LAURENCE GOLD
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036

JAMES B. COPPESS
815 Sixteenth Street, N.W.
Washington, D.C. 20006

* Counsel of Record

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---

BRIEF IN OPPOSITION

STATEMENT

The petitioner Delaware River and Bay Authority (Authority or DRBA) is "an agency of government of the State of Delaware and the State of New Jersey" created by the Delaware-New Jersey Compact. Pet. App. 56a.

Acting pursuant to the judicial authority vouchsafed by Article XV of the Compact, the New Jersey Supreme Court held that under Article VIII of the Compact, since "the laws of New Jersey and Delaware are substantially similar concerning the right of public employees to negotiate collectively," the Authority is legally obligated to recognize the collective negotiation right of its employees. App. 1a-2a, 13a. The New Jersey court accordingly affirmed the decision of the New Jersey Appellate Division remanding this case to the trial court "to determine how the complementary labor policies of New Jersey

and Delaware, as expressed in their parallel labor legislation, are to be effectuated." Pet. App. 30a.

ARGUMENT

This case presents a single, mundane question of the proper construction of the Delaware-New Jersey Compact —not, as the petition for certiorari would have it, "a basic constitutional question of overriding importance to the interstate compact device," Pet. 11. That compact construction question is rendered even more mundane by the fact that the decision below is consistent with *both* the New Jersey courts' long-standing construction of the Delaware-New Jersey Compact *and* with the Delaware courts' construction of the Compact.

And, while the petition for certiorari struggles mightily to generate a conflict, the approach of the New Jersey courts and the Delaware courts to the construction of the Compact between these States is consistent with the approach of the other appellate courts that have confronted this kind of issue. Conversely, the petition is not able to muster a single authority in support of its understanding of how settlor states, regardless of what a compact provides, must legislate with respect to public bodies created by interstate compacts.

The petition for certiorari should therefore be denied.

1. The "basic constitutional question" that the petition claims to be presented by this case is "whether the courts of one state unilaterally may subject an interstate compact authority to additional duties or obligations implied from the general laws or policies of the compact states, when . . . doing so would contravene express terms of the compact without the actual consent of the compact states or Congress." Pet. 12. This case does *not* raise this question, and, not surprisingly, the New Jersey Supreme Court did *not* undertake to answer any such question.[1]

---

[1] Indeed, far from "answering that question in the affirmative," Pet. 12, the New Jersey Supreme Court recognized that "[a] single

Rather than seeking to override the Compact in any way, the New Jersey Supreme Court exercised the judicial authority expressly provided by Article XV of the Compact to construe Article VIII of the Compact in accord with its express language. Article XV of the Compact provides:

> Judicial proceedings to review any by-law, rule, regulation, order or other action of the Authority . . . may be brought *in such court of each State,* and pursuant to such laws or rules thereof, as a similar proceeding with respect to any agency of such State might be brought. [Pet. App. 65a (emphasis added).]

Article VIII of the Compact provides:

> For the purposes of effectuating the authorized purposes of the Authority, additional powers may be granted to the Authority by legislation of either State without the concurrence of the other, and may be exercised within such State, . . .; but *no additional duties or obligations shall be undertaken by the Authority under the law of either State* or of Congress *without authorization by the law of both States.* [Pet. App. 61a (emphasis added).]

What Article VIII means, said the New Jersey Supreme Court, is that "the two states may subject DRBA to complementary or parallel legislation." Pet. App. 12a. In other words, such legislation is the "authorization by the law of both States" that, under the Compact, does work to impose "additional duties and obligations" on the Authority.

That being so, the New Jersey Supreme Court held that the Authority "may be subject to complementary or parallel legislation that does not intrude upon the mission of the agency." Pet. App. 10a, quoting *Ampro Fisheries, Inc. v. Yaskin,* 127 N.J. 602, 606 A.2d 1099, 1103 (1992). And, as the New Jersey court recognized, en-

---

state may not unilaterally impose additional duties on a bi-state agency." Pet. App. 9a.

gaging in collective negotiations with the chosen representative of the DRBA employees does not in any way interfere with the mission of the Authority. Pet. App. 13a. Under New Jersey and Delaware law, the duty to engage in collective negotiations requires only that the parties confer in good faith with a desire to reach a mutually acceptable agreement; neither party is required to agree to a proposal. *See In the Matter of Hunterdon Country Bd. of Ed.*, 116 N.J. 322, 561 A.2d 597, 605 (1989); Title 19 Del. C. § 1302(d).

It is very much to the point in this regard that the courts of New Jersey and Delaware have long recognized that the Authority's labor relations are to be governed by the "substantially similar" laws of both States. Pet. App. 10a. Three years after the Authority was created, the New Jersey Supreme Court sustained an injunction against strike activity by DRBA employees. *Delaware River and Bay Authority v. International Organization of Masters, Mates & Pilots*, 45 N.J. 138, 211 A.2d 789 (1965). The New Jersey court dismissed the argument that, as the product of an interstate compact, the DRBA could not get such an injunction, and did so on grounds that are consistent with its opinion in this case:

> The fact that the Authority is designated as a bi-state agency, rather than an agency of New Jersey alone, has no materiality at least where, as here, *there is no indication that the historic and widely prevailing policy against strikes by public employees is not equally applicable in both states.* [211 A.2d at 794 (emphasis added).]

One year later, the Delaware Chancery Court applied the same mode of analysis in determining that DRBA employees did not have the right to engage in collective negotiations pursuant to the Delaware public employee bargaining law *because New Jersey, at that time, had not similarly extended collective negotiation rights to public employees. Delaware River & Bay Authority v. Carello*, 222 A.2d 794 (Del. Ch. 1966). The Delaware court

noted that, under the laws of Delaware, "the Authority would [be] require[d] . . . to recognize an exclusive bargaining agent" of its employees. *Id.* at 799. Referring to Article I, § 19 of the New Jersey Constitution, the Delaware court further noted, however, that "according to New Jersey judicial interpretation of its constitutional provision, there are incidents to collective bargaining . . . not appropriate to the public employment field. . . ." *Id.* (internal quotation marks and citation omitted). The Delaware court therefore concluded:

> The Delaware statute in issue cannot . . . be applied to the Authority *in view of the New Jersey constitutional provision.* [*Id.* (emphasis added).]

And, the Delaware court went on to explain:

> [t]he Delaware statute in issue must remain ineffective *until concurrent legislative action of a similar nature is taken by the State of New Jersey.* [*Id.* (emphasis added).]

As the New Jersey Supreme Court noted, two years after *Carello* "the New Jersey Legislature passed public employment legislation," which "constitutes concurrent legislative action." Pet. App. 11a-12a. With New Jersey's enactment of this legislation, the New Jersey court concluded, "the New Jersey and Delaware legislatures ha[d] adopted a substantially similar policy concerning collective negotiations by public employees." Pet. App. 13a. And, the court below concluded that "the failure to apply so important a policy to an entity created by both states for their mutual benefit" would be "[a]nomolous." *Id.*[2]

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[2] The Authority argues that "Article VII(e) of the Compact, vesting in DRBA the authority to fix the terms and conditions of employment . . . was 'intended to keep matters concerning labor relations and collective negotiations in the hands of the DRBA.'" Pet. 9, quoting Pet. App. 15a (Garibaldi, J., dissenting). That, of course, was not the Authority's understanding when it brought the labor injunction proceeding in the *Masters, Mates & Pilots* case. And, while Article VII(e) provides that the Authority is empowered to "fix and determine . . . conditions and terms of employment,"

The approach of the Delaware and New Jersey courts to this question represents the application in the area of labor relations of the well-established principles that "[b]i-state agencies . . . do not exist in a vacuum and are not immune from regulation" and that "member states can pass substantially similar legislation, as contemplated by the compact." *Delaware River Port Authority v. Commonwealth*, 137 Pa. Commw. 170, 585 A.2d 587, 588 (1991). *See, e.g., Redbird Engineering Sales, Inc. v. Bi-State Development Agency*, 806 S.W.2d 695, 701 (Mo. Ct. App. 1991); *State of Washington v. Svenson*, 104 Wash.2d 533, 707 P.2d 120, 124 (1985).[3]

2. As contrary authority, the certiorari petition relies heavily upon a per curiam opinion of the New York Court of Appeals holding that article 23-A of New York's Correction Law was not intended to apply to the Waterfront Commission of New York Harbor. *Malverty v. Waterfront Commission of New York Harbor*, 71 N.Y.2d 977,

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Pet. App. 69a, nothing in the Compact provides that in so doing the Authority must act unilaterally and outside all systems of legal regulation or that the Authority is precluded from engaging in negotiations, collective or individual, and from entering into binding contracts. The New Jersey Supreme Court thus quite properly rejected the reading of Article VII(e) advanced by the Authority. Pet. App. 11a.

[3] The certiorari petition demonstrates its misunderstanding of the deicsion below when it describes the New Jersey Supreme Court as "rul[ing] that one state's court may subject a bi-state agency to the 'complementary or parallel legislation' of both states under an implied-consent theory." Pet. 8. Implied consent by the bi-state agency is an *alternative* ground—*not* relied upon by the court below—for subjecting the agency to particular state regulation. Pet. App. 10a-11a ("If the creator states do not enact complementary or parallel legislation, a court must make additional findings before concluding that the bi-state agency impliedly consented to regulation by one creator state.), citing *Eastern Paralyzed Veterans v. City of Camden*, 111 N.J. 389, 545 A.2d 127, 134 (1988) ("If the New Jersey regulatory system is not 'complementary' to Pennsylvania's, then we believe that additional findings must be made before we can conclude that the DRPA has impliedly consented to provide elevator access to its train platform.").

524 N.E.2d 421 (1988). But *Malverty*, too, turned on a narrow interpretative question—and not on any grand Compact Clause issue—albeit a question of the proper interpretation of the New York statute at issue there.

In *Malverty*, the New York court observed that "[i]n the past, the New York Legislature has expressly stated that certain legislation was amending a certain portion of the 'Compact' and that the new law would take effect upon the enactment into law by New Jersey of legislation having an effect identical to New York's legislation, unless New Jersey had already done so, in which case the amendment would take effect immediately." 524 N.E.2d at 422. And, the New York court concluded "that *the New York Legislature never intended* article 23-A to apply to the Waterfront Commission," based on the following indicia of the Legislature's intent: "the absence from the text and legislative history of article 23-A of any reference to the Waterfront Commission, coupled with the absence of an express statement that the Legislature was amending or supplementing the provisions of the 'Compact' and that article 23-A would take effect upon the enactment by New Jersey of legislation of identical effect, if it had not already done so. . . ." *Id.* (emphasis added).

The certiorari petition does not claim that the New Jersey court has misunderstood the intent of the New Jersey legislature. Thus, the holding and rationale of *Malverty* have no pertinence here. Nor is the petition's argument advanced by the observation of the *Malverty* court that the New York legislature's approach to enacting legislation governing the Waterfront Commission is required by "the express terms of 'the Compact' . . . ." 524 N.E.2d at 422. As we have seen, both the Delaware and New Jersey courts have concluded that the relevant terms of the Compact here *are* satisfied by the enactment of substantially similar legislation in both States.

The remaining appellate court decisions cited by the petition (at pp. 18-20 & 27-28) as creating a conflict are

not, in fact, contrary to the New Jersey Supreme Court's decision here. The cited decisions that do address the application of parallel or complementary legislative enactments to bi-state agencies accept the approach of the court below, while finding the legislation in question is not parallel or complementary.[4] And, the other cited decisions stand for the unexceptional proposition—recognized by the New Jersey Supreme Court—that the law of *one* settlor state *standing alone* is not applicable to a bi-state agency.[5] As the petition does not challenge the finding of the court below that the Delaware and New Jersey laws are parallel and complementary, none of the cited decisions are in conflict with the decision below.

3. At bottom, it is the theory of the certiorari petition that the application of state legislation to a bi-state entity

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[4] *Delaware River Port Authority v. Commonwealth*, 585 A.2d at 588 ("Neither is it contended that Pennsylvania and New Jersey have passed substantially similar legislation, as contemplated by the compact."); *Nardi v. Delaware River Port Authority*, 88 Pa. Commw. 558, 490 A.2d 949, 952 n.10 (1984) ("additional distinguishing features between these two statutes further prevented them from being 'substantially similar' legislative acts"); *Delaware River & Bay Authority v. Carello*, 222 A.2d at 799 ("the Delaware [public sector collective bargaining] statute . . . must remain ineffective until concurrent legislative action of a similar nature is taken by the State of New Jersey"). *See also Agesen v. Catherwood*, 26 N.Y.2d 521, 260 N.E.2d 525 (1970) (refusing to apply New York law to the Port Authority because of "a general intent, amply reflected in the compact, that the internal operations of the Authority be independent of the direct control of either State acting without the concurrence of the other").

[5] *Salmon For All v. Dept. of Fisheries*, 118 Wash.2d 270, 821 P.2d 1211, 1215-16 (1992) (Washington's Open Public Meetings Act does not apply to meeting pursuant to the Columbia River Compact); *Seattle Master Builders v. Pacific Northwest Electric & Power Planning Council*, 786 F.2d 1359, 1371 (9th Cir. 1986) (Council is not required to prepare an environmental impact statement pursuant to Washington environmental protection statute). *See also Klickitat County v. Washington*, 71 Wash. App. 760, 862 P.2d 629 (1993) ("land use requirements" adopted pursuant to interstate compact "are not a state program" within meaning of Washington law).

"requires the legislative consent of both states and Congress." Pet. 16. *See also id.* 13-14. However, the petition cites not one decision that reads the Compact Clause to so limit the authority of settlor states to provide in their compacts for the regulation of a bi-state entity. Even *Malverty*, on which the petition places principal reliance, would not require Congressional approval of concurrently enacted legislation intended by the States of New York and New Jersey to apply to the Waterfront Commission. Under the Compact Clause, Congressional approval is only necessary to amend the express terms of a compact or to increase the authority of the bi-state agency in a manner that enhances state power at the expense of federal supremacy. *See Cuyler v. Adams*, 449 U.S. 433, 438-442 (1981). *See also Lake Country Estates v. Tahoe Planning Agency*, 440 U.S. 391, 399 (1979). Concurrent regulation of a bi-state agency's labor relations by the parallel and complementary laws of the settlor states, in a manner contemplated by their compact, does not have either effect.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

RAYMOND G. HEINEMAN *
KROLL & HEINEMAN
300 Executive Drive, Suite 010
West Orange, New Jersey 07052
(973) 243-0100

LAURENCE GOLD
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036

JAMES B. COPPESS
815 Sixteenth Street, N.W.
Washington, D.C. 20006

* Counsel of Record

(4)

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On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

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BRIEF OF *AMICI CURIAE*, GRAND LODGE OF THE FRATERNAL ORDER OF POLICE, AND FRATERNAL ORDER OF POLICE PENN-JERSEY LODGE 30 IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

THOMAS T. RUTHERFORD
General Counsel to the Grand Lodge of the Fraternal Order of Police
320 Gold Street S.W.
Suite 1000
Albuquerque, NM 87103
(505) 842-6700
Counsel for Amici Curiae, *Grand Lodge of the Fraternal Order of Police*

BRUCE E. ENDY *
CHARES T. JOYCE
SPEAR, WILDERMAN, BORISH, ENDY, SPEAR AND RUNCKEL, P.C.
230 South Broad Street
Suite 1400
Philadelphia, PA 19102
(215) 732-0101
Counsel for Amici Curiae, *Fraternal Order of Police, Penn-Jersey Lodge 30*

* Counsel of Record

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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COUNTERSTATEMENT OF THE QUESTION PRESENTED

Whether complementary and substantially similar legislation enacted by states which are parties to an interstate compact may be applied to a bi-state agency that is a creature of that compact, when the express terms of the compact, as approved by Congress, provide that additional duties or obligations may be undertaken by the agency if authorized by the laws of both states. The New Jersey Supreme Court, applying a long-settled and well established principle of legal construction of congressionally-approved interstate compacts, which does not conflict with the decisions of this Court, other state high courts, or the federal courts, answered that question in the affirmative, and ruled that the parallel labor law policies of New Jersey and Delaware that allow all public employees to organize and negotiate collectively with their employers should be applied to the Delaware River and Bay Authority, a bi-state agency of New Jersey and Delaware.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

No. 97-81

THE DELAWARE RIVER AND BAY AUTHORITY,
Petitioner,

v.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 68, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

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BRIEF OF *AMICI CURIAE*, GRAND LODGE OF THE FRATERNAL ORDER OF POLICE, AND FRATERNAL ORDER OF POLICE PENN-JERSEY LODGE 30 IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

THE INTEREST OF THE *AMICI CURIAE* GRAND LODGE OF THE FRATERNAL ORDER OF POLICE AND FRATERNAL ORDER OF POLICE PENN-JERSEY LODGE 30 *

The Grand Lodge of the Fraternal Order of Police ("Grand Lodge") is an international organization of full-time law enforcement officers employed by federal, state or local government agencies. Its 1,982 local lodges comprise a total membership of 265,441 active members. The Fraternal Order of Police was founded in 1915 in Pitts-

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* The cost of this *amici curiae* brief was paid in full by the Grand Lodge of the Fraternal Order of Police and Fraternal Order of Police Lodge 30. Neither the Respondent nor the Petitioner contributed to its preparation.

burgh, Pennsylvania, and is currently incorporated under the laws of the Commonwealth of Pennsylvania. The Grand Lodge serves 39 affiliated state lodges in the United States, and has two international affiliates in Canada and Ireland. The Grand Lodge has its headquarters in Nashville, Tennessee, and also maintains offices in Washington, D.C.

The affiliates of the Grand Lodge represent law enforcement officers employed by several congressionally-approved interstate agencies, including the Delaware River and Bay Authority, the petitioner herein, and the Delaware River Port Authority, a bi-state agency of New Jersey and Pennsylvania. Thus, the Grand Lodge maintains an abiding interest in insuring that interstate agencies comply fully with their legal obligations, as set forth by their respective creator states, to recognize the rights of their employees to organize and negotiate collectively the terms and conditions of their employment.

The Fraternal Order of Police Penn-Jersey Lodge 30, ("Lodge 30" or "FOP"), is a labor organization and the exclusive negotiation representative for police officers employed by the DRPA. Lodge 30 is affiliated with the Grand Lodge through the Pennsylvania Lodge.

Since the Mid-1970s, the DRPA and Lodge 30 have entered into a series of successive collective bargaining agreements to determine the wages and working conditions of DRPA patrol officers. See attached Appendix to Brief of *Amici Curiae* FOP, 3a-4a. ("FOP App."). In August, 1996, however, the DRPA unilaterally imposed a new set of employment terms and conditions upon its FOP-represented patrol officers, and Lodge 30 brought an action in New Jersey Superior Court seeking an order compelling the DRPA to rescind these terms and conditions, and to negotiate in good faith with the FOP. FOP App. 1a. Lodge 30's lawsuit was predicated, in part, upon the Decision of the Appellate Division of the New Jersey Superior Court in *IUOE Local 68, et al. v. Delaware River and Bay Authority* (reprinted in Peti-

tioner's Appendix at App. 22a), then on appeal to the New Jersey Supreme Court.

On December 20, 1996, the New Jersey Superior Court issued a bench ruling in Lodge 30's Action against the DRPA, holding that New Jersey and Pennsylvania had "set forth parallel or complementary legislation" which "clearly gives public employees a right to freely organize and designate representatives and also to negotiate in good faith," FOP App. 17a, and that this policy governed Lodge 30's labor relations with the DRPA. *Id.* 16a.

As the continuing viability of Lodge 30's litigation depends in substantial degree upon the holding and rationale of the New Jersey Supreme Court decision in this case, Lodge 30's interest in this Petition is direct and immediate.

The Grand Lodge of the Farternal Order of Police and Fraternal Order of Police Penn-Jersey Lodge 30 have received written consent of the parties to file an *Amici Curiae* brief in opposition to the Petition for Writ of Certiorari. The letters signifying this consent are filed with the Clerk of this Court along with this brief.

SUMMARY OF ARGUMENT

The Petition for Certiorari should be denied, as the decision by the New Jersey Supreme Court below merely represents a creator state court's construction of the terms of an interstate compact, a construction identical to that employed by the courts of the other party to the compact, the State of Delaware, and one that is entirely consistent with this Court's Compact Clause precedents, and not in material conflict with any other state or federal decision. Fundamentally, this case concerns the meaning each of the creator states have given to the terms of their bi-state compact. Since they fully agree on the legal approach used to divine such meaning, there is no need for this Court to intervene.

Further, petitioner's claim that the decision below will lead to "discord and a destruction of the purposes for

which bi-state agencies are formed" is wholly without support in the record and thus invites this Court to engage in an abstract and highly speculative analysis of the potential reach and impact of this decision. Such a case, in such a posture, should not be reviewed by this Court.

REASONS FOR DENYING THE WRIT

I. THE DECISION BELOW APPLIES LONG-SETTLED AND CONSISTENT PRINCIPLES OF NEW JERSEY AND DELAWARE JURISPRUDENCE REGARDING THE APPLICABILITY OF COMPLEMENTARY AND PARALLEL LAWS OF THE CREATOR STATES TO THE DELAWARE RIVER AND BAY AUTHORITY, AND THERE IS NO REASON FOR THIS COURT TO DISTURB THIS WELL-ESTABLISHED DOCTRINE

In its Petition, the Delaware River and Bay Authority ("Bay Authority" or "Petitioner") launches a blunderbuss-style assault upon the principle that an agency formed by an interstate compact can be regulated by parallel and complementary legislation passed by the states that have formed the compact. However, no reason exists for this Court to "commit[] its scarce judicial resources" to adjudge the merit of the principle of complementary legislation in this case. *Oklahoma City v. Tuttle*, 471 U.S. 808, 816 (1985). Both of the states that created the interstate compact involved in this case—New Jersey and Delaware—have consistently embraced the doctrine, and have considered it a settled staple of their jurisprudence for over three decades.

Indeed, it is singularly ironic that this petitioner now protests the principle of parallelism, as it was first espoused over 30 years ago by the Delaware River and Bay Authority itself, in a case that, perhaps fittingly, arose out of a labor dispute. In *Delaware River and Bay Authority v. International Association of Masters, Mates, and Pilots*, 211 A.2d 789 (N.J. 1965), the New Jersey Supreme Court ruled that the DRBA's employees were prohibited from engaging in a work stoppage because

they were "public employees" who, under New Jersey and Delaware law, were forbidden from striking. Upholding the Bay Authority's right to petition the Chancery Court for an injunction to end the labor dispute, the New Jersey Supreme Court held, "[t]he fact that the Authority is designated as a bi-state agency, rather than an agency of New Jersey alone, has no materiality," because there is "no indication that the historic and widely prevailing policy against strikes by public employees is not equally applicable in both states." 211 A.2d at 794.[1] The court thus found that an aspect of labor regulation was applicable to the petitioner because its creator states shared a "prevailing" public policy on the subject, and conferred a right upon the petitioner—the authorization to seek injunctive relief to combat a strike by its employees—that was not specifically granted in the bi-state compact that created the Bay Authority.

One year after *Masters, Mates and Pilots*, the Delaware courts signalled their ready acceptance of the concept of parallel and complementary legislation in yet another case involving the petitioner, *Delaware River and Bay Authority v. Carello*, 222 A.2d 794 (Del. Ch. 1966). Petitioner

[1] As the court in *Masters, Mates and Pilots* noted, strikes by public workers were prohibited in New Jersey by virtue of the Attorney General's memorandum opinion construing the rights of public employees under the New Jersey Constitution, Article I, Paragraph 19, and the New Jersey Superior Court's decision in *New Jersey Turnpike Auth. v. AFSCME, Local 1511*, 200 A.2d 134 (N.J. Super. Ct. Ch. Div. 1964), which held that public employees have the right to organize and engage in collective negotiations with their employers (who have the concomitant duty to consider their proposal in "good faith"), but do not possess the power to strike over their demands or proposals. See *Masters, Mates*, 211 A.2d at 791-93. At the time, Delaware possessed a similar prohibition against public sector work stoppages, featured as part of a legislative enactment. *See* Right of Public Employees to Organize Act, *Del. Code Ann.* title 19 §§ 1301-1312, *repealed*, Public Employment Relations Act, *Del. Code Ann.* title 12 §§ 1301-1318 (Supp. 1994). New Jersey eventually codified its restriction upon public employee strikes when it enacted the Public Employer-Employee Relations Act in 1968. N.J.S.A. § 34:13A-1 *et seq.*

wrongly asserts that *Carello* stands for the proposition that only "concurrent legislation passed by the compact states" that "plainly state[s] that it applies to the interstate authority or is in fact intended to amend the compact", may serve to regulate a bi-state agency. (Pet. 18) Exactly the opposite is true, as a plain reading of the case indicates. In *Carello,* the Delaware Chancery Court ruled that Delaware's public sector labor statute was inapplicable to employees of the Bay Authority, *not* because it did not expressly cover these employees, but only because New Jersey had not, as of then, passed similar labor legislation. As the court put it, "the Delaware statute in issue must remain ineffective *until concurrent legislative action of a similar nature is taken by the State of New Jersey.*" 222 A.2d at 799 (emphasis added).

Following *Carello,* the theory of complementary legislation was next discussed by a New Jersey court in *Eastern Paralyzed Veterans Ass'n v. Camden,* 545 A.2d 127 (N.J. 1988) ("*Eastern*"). *Eastern* concerned the applicability of New Jersey anti-discrimination legislation to the Delaware River Port Authority ("DRPA"), a bi-state agency of New Jersey and Pennsylvania. In remanding the case to the trial court for it to determine whether "Pennsylvania's statues governing handicap accessibility" were substantially similar to New Jersey's so as to govern the DRPA, the New Jersey Supreme Court fully endorsed the concept of complementary legislation, holding:

> The corollary of the proposition that neither state may individually impose its will on the bi-state agency is that the agency may be made subject to complementary or parallel state legislation.

545 A.2d at 133, *citing Delaware River Joint Toll Bridge Comm. v. Colburn,* 310 U.S. 419 (1940).[2]

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[2] Significantly, the court in *Eastern* did not hold that the compact states' legislation had to explicitly specify that it embraced a particular bi-state agency. 542 A.3d at 134 (all that is "required to sustain this theory" is "[s]ome showing of agreement by both states" that their policies are meant to be applicable to the bi-state agency). However, finding that the issue of whether New Jersey's

Eastern, and two subsequent decisions of the New Jersey High Court, *Ampro Fisheries, Inc. v. Yaskin*, 606 A.2d 1099 (N.J. 1992), *cert. denied*, 506 U.S. 954 (1992), and *Bunk v. Port Authority of New York and New Jersey*, 676 A.2d 118 (N.J. 1996), further laid the doctrinal groundwork for the holding of the New Jersey Supreme Court below. In *Ampro Fisheries*, the court ruled that regulations promulgated by the New Jersey Department of Environmental Protection and Energy to restrict a certain class of commercial fishing were applicable to the Delaware Bay, even though that body of water was governed by a 1905 Interstate Compact between New Jersey and Delaware. The court found that because the New Jersey rules did "not directly conflict with any regulations enacted by the State of Delaware," they were "complementary and parallel," and "courts have regularly held that a bi-state agency may be subject to complementary or parallel state legislation that does not intrude on the mission of the agency." 606 A.2d at 1104, 1103.

In *Bunk*, the court considered whether an employee of the Port Authority of New York and New Jersey, a bi-state agency of those two states, was covered under a provision of New Jersey Workers' Compensation law that limited benefits of public employees receiving a disability pension for the same injury. This question required the court to apply the "principles of parallelism," and survey New York's provisions for simultaneous receipt of worker's compensation and disability benefits. 676 A.2d at 121. Noting that "[o]ne of the central themes of [both compact states'] recent legislatures is that there should not be double recovery from two sources for the same injury," the court held that New Jersey's limitation on benefits was fully consonant with the "dominant policy" of both New

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handicapped-access construction regulatory system was "complementary" to Pennsylvania's scheme was a "fact-sensitive" question of law, the court remanded the matter to the trial judge to "consider whether there is complementary legislation in New Jersey and Pennsylvania that would make equivalent the DRPA's obligation to each state to provide barrier-free access to handicapped persons." *Id.* at 134, 136.

Jersey and New York law, and therefore applicable to the Port Authority. *Id.* at 124.

Although over three decades separate the New Jersey Supreme Court's first articulation of the concept of parallelism in *Masters, Mates and Pilots* from that court's full fledged apotheosis of the principle in *Bunk,* the weave of reasoning linking these decisions is consistent and entirely straightforward. Just as no single creator state can unilaterally impose additional duties or obligations upon a bi-state agency, "the corollary of [that] proposition is that the agency may be subject to complementary or parallel state regulation." *Bunk,* 676 A.2d at 118; *Eastern,* 545 A.2d at 133. Legislative enactments need not be "identical" in each creator state to be given parallel effect; all that is necessary is that the laws be "substantially similar," *Carello*; *Eastern,* and articulate a "central" or "dominant theme" in the respective public policies of the states. *Eastern; Bunk.* Finally, the laws need not specifically provide that they are meant to cover a bi-state agency. *Masters, Mates and Pilots*; *Eastern.*

Thus, well before the New Jersey Supreme Court applied the principles of parallelism in the case below, courts in the two compact states had fully and routinely employed this doctrine. *See e.g., Carello; Textar Painting Corp. v. Delaware River Port Authority,* 636 A.2d 795, 798-99 (N.J. Super. Ct. Law Div. 1996) (DRPA must engage in competitive bidding of public contracts, even though its compact does not expressly require it, because the policy of both of its creator states is substantially similar and complementary).

Therefore, when properly viewed in context of the historical development of the doctrine of complementary legislation in New Jersey and Delaware, it strains credulity to seriously entertain petitioner's depiction of the decision below as constituting "an about-face" or a departure from consistent legal principles long-settled in the Compact states.[8] Before granting certiorari to pass upon

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[8] Petitioner's insistence that the decision below is an anomaly in the compact states' cases stems entirely from its reading of a single

a legal doctrine that is so firmly established, *Amici* thus respectfully submit that this Court should consider closely whether the petitioner's bold claims that the decision below contravenes the Compact Clause, or directly or materially conflicts with decisions of other state or federal courts, retain any real substance. As we go on to show, they do not.

II. THE DOCTRINE OF PARALLEL LEGISLATION AS APPLIED BY THE DECISION BELOW TO THE BAY AUTHORITY COMPACT DOES NOT CONTRAVENE THE COMPACT, VIOLATE THE COMPACT CLAUSE, OR CONFLICT WITH DECISIONS OF OTHER STATE OR LOWER FEDERAL COURTS

A. The Decision Is Not Contrary to the Terms of the Compact or to This Court's Precedents

Petitioner asserts that the decision below permits "the courts of one state unilaterally to subject an interstate compact authority to additional obligations or duties in direct contravention of the compact without the express consent of the compact states or congress," and thus must be reviewed by the Court. (Pet. 13). Such hyperbole betrays a profound misreading of the case, ignores the plain provisions of the Bay Authority Compact, and overlooks this Court's precedents regarding the mechanics of con-

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New Jersey Appellate Court decision, *Delaware River and Bay Authority v. New Jersey Pub. Employment Relations Comm'n* ("*New Jersey PERC*"), 270 A.2d 704 (N.J. Super. Ct. App. Div. 1970), *aff'd* 277 A.2d 880 (N.J. 1971). (*See* Pet. 19.). In *New Jersey PERC*, however, the court emphatically did *not* rule that the creator states' labor laws were inapplicable to a bi-state agency; rather, as the court put it, "[t]he narrow issue for determination" was whether PERC, the New Jersey administrative agency charged with overseeking New Jersey's public employment statute, could unilaterally maintain jurisdiction over the Bay Authority. 270 A.2d at 705. Because the agency had no jurisdiction over any "employer" but the State of New Jersey, its agencies or political subdivisions, the court simply and solely concluded that PERC lacked authority over a *bi-state* agency of Delaware and New Jersey —not that complementary policies embodied in both states' laws could not be applied by the states' courts to such an entity.

gressional consent to interstate compacts under the Constitution.

Fundamentally, the New Jersey Supreme Court did not rule that *courts* can unilaterally alter or modify a bi-state compact. Rather, the court below "merely recognized that the New Jersey and Delaware *legislatures* have adopted a substantially similar policy concerning collective negotiations by public employees. . . . As a matter of public policy, the legislatures of both states have concluded that public employees should have the right of collective negotiation and that employers should not interfere with that right." App. 12a-13a (emphasis added). Finding that it would be "[a]nomalous indeed" to fail "to apply so important a policy to an entity created by both states for their mutual benefit," the court concluded that by enacting substantially similar public sector labor legislation, "*the legislatures have modified the Compact.*" *Id.* (emphasis added). Thus, the decision below was premised not upon a unilateral exercise of judicial power, but upon the mutually expressed will of the legislatures of both Compact states.

Contrary to petitioner's arguments, ample authority for this bilateral legislative action—the *sine qua non* for the principle of parallelism—was found by the New Jersey Supreme Court in the very language of the Bay Authority Compact. As the court noted, Article VIII of the Compact specifies that the Bay Authority shall not undertake any additional duties or obligations "under the law of either State or Congress without authorization by the law of both states." App. 12a; 61a; 80-81a. "Implicit in that provision," reasoned the court, "is the premise that the two states may subject the DRBA to complementary or parallel legislation." App. 12a.

The presence of Article VIII also dispatches petitioner's alternative argument, that the decision below "circumscribes Congress' constitutionally mandated consent role" embodied in the Compact Clause of the Constitution. Pet. 14). Indeed, while the "requirement of congressional consent is at the heart of the Compact Clause," *Cuyler v.*

Adams, 449 U.S. 433, 439 (1981), this Court has also made plain that "Congress may consent to an interstate compact *by authorizing joint action in advance* or by giving express or *implied* approval to an agreement the states have already joined." *Id.* at 444 (emphasis added). Following *Cuyler*, federal courts have found implied or advance congressional approval of subsequent modifications made by compact states to an interstate compact by relying upon language similar to that contained in Article VIII of the DRBA Compact. In *Waterfront Comm'n v. Construction and Marine Equipment Co.*, 928 F.Supp. 1388 (D.N.J. 1996), for example, the court held that Congress' original 1953 consent to the Interstate Compact that formed the Waterfront Commission of New York Harbor, containing a provision that "amendments and supplements" to the Compact could be effectuated "by the action of the legislature of either state concurred in by the legislature of the other," allowed the creator states to enact legislation modifying the Compact in 1966, without further express congressional approval. 928 F.Supp. at 1403.

In like fashion here, when Congress gave its consent to the Bay Authority Compact in 1962, it approved Article VIII, allowing the Compact states to impose additional obligations or duties upon the petitioner by the means of parallel and complementary legislation. Under *Cuyler*, no subsequent congressional blessing of the decision of the New Jersey and Delaware legislatures to modify the Compact by enacting substantially similar public sector labor laws is constitutionally mandated, and the absence of any "express" consent by Congress thus forms no basis for this Court's review of this case.[4]

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[4] While the 1962 Joint Congressional Resolution bestowing approval upon the Bay Authority Compact advised that it was not granting advance consent for the assumption by the Authority of additional *powers* under Article VII, it did not withhold congressional assent for the imposition by the creator states of additional *obligations* or *duties* upon the petitioner. App. 68a. Such an ap-

B. The Decision Below Does Not Materially Conflict With Decisions of Other State Courts or Federal Courts

In groping for a reason for this Court to exercise certiorari jurisdiction here, petitioner suggests that the application of the principle of complementary legislation by the New Jersey Supreme Court below conflicts with holdings of Delaware, Pennsylvania, Washington and New York state courts, as well as decisions of the federal Courts of Appeal and District Courts. Pet. 18-20. This assertion is simply inaccurate. In making it, petitioner misreads the cases it cites, conjuring up conflicts that either do not exist, or are of no or material import to this Petition.

First, and most significantly, the courts of Delaware—the only other Compact state involved here—fully join in New Jersey courts' long adherence to the principle of complementary legislation. In *Carello,* the Delaware Chancery Court observed that the only impediment to the application of Delaware's policy protecting public employee labor rights to the Bay Authority was the absence of "legislative action of a similar nature . . . taken by the State of New Jersey." 222 A.2d at

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proach to continuing congressional oversight accords fully with the teachings of this Court. As Justice O'Connor has explained,

> The Consent Clause neither transforms the nature of state power nor makes Congress a full fledged participant in the underlying agreement; it requires *only* that Congress 'check any infringement of the rights of national government' . . . In consenting, Congress certifies that the States are acting within their boundaries in our federal scheme and that the national interest is not offended.

Hess v. Port Authority Trans-Hudson Corp., 513 U.S. 394, 408 (1994) (O'Connor, J., Dissenting), *quoting* J. Story, Commentaries on the Constitution of the United States § 1403 p. 264 (T. Cooley ed. 1873). Plainly, an amendment by the Compact states that merely protects petitioner's employees' ability to organize and negotiate with the Bay Authority, and accords them the same labor rights enjoyed by every other public employee in these two states, can hardly be feared to "offend the national interest."

799. Similarly, despite petitioner's completely erroneous claims to the contrary, Pennsylvania courts have entirely adopted the principle of parallelism. In *Nardi v. Delaware River Port Authority*, 490 A.2d 949 (Pa. Cmwth. 1985), the Pennsylvania Commonwealth Court held that the disability provisions of the Pennsylvania Benefits Law, 53 Pa. Stat. Ann. §§ 637, *et seq.*, did not cover DRPA police officers, but only because New Jersey's equivalent compensation statute was "*not* substantially similar." 490 A.2d at 952 (emphasis in original). Indeed, the court in *Nardi* took pains to emphasize that "*identical* legislation" would not have been required to render the law applicable to the bi-state agency, and invited the New Jersey legislature to "amend its statute to reflect agreement with the clearly stated intention of the Pennsylvania legislature." *Id.* at n.10, n.11 (emphasis in original).[5]

Petitioner's contention that Washington state courts and the Ninth Circuit Court of Appeals reject the doctrine of parallel legislation likewise finds no support whatever in the cases cited. In *Salmon for All v. Department of Fisheries*, 821 P.2d 1211 (Wash. 1992) (en banc), for example, there was no attempt to apply bilateral state laws to an interstate agency; the plaintiff there merely argued that the Washington open meetings law unilaterally bound the proceedings of a Washington-Oregon bi-state agency, without referencing Oregon law. The theory of complementary legislation was not even mentioned, much less advanced as a basis for the plaintiff's claim. *See also Klickitat County v. State*, 862 P.2d 629 (Wash. Ct. App. 1993) (issue only whether Washington law indemnifying counties for adopting land use ordinance applied to Washington-Oregon interstate agency; no discussion of whether

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[5] Following *Nardi*, the Pennsylvania courts have expressly declared that "bi-state agencies . . . do not exist in a vacuum and are not immune from regulation. Such regulation can take several forms. . . . the member states can pass *substantially similar legislation*, as contemplated by the compact." *Delaware River Port Authority v. Ethics Comm'n.*, 585 A.2d 587, 588 (Pa. Cmwlth 1991) (emphasis added).

Oregon had similar law). Similarly, in *Seattle Master Builders Ass'n v. Pacific Northwest Electrical Power and Conservation Planning Council*, 786 F.2d 1359 (9th Cir. 1986), *cert. denied*, 479 U.S. 1059 (1987), the plaintiff unsuccessfully argued that the environmental laws of Montana and Washington were applicable to a *multi*-state compact, composed of those two sovereigns *as well as* Oregon and Idaho. 786 F.2d at 1362, 1370-71. Again, there was no effort to argue that the latter two states likewise featured such legislation, and the doctrine of parallelism was never raised.

The decision below plainly does not conflict, in any conceivable manner, with *any* of these cases.[6] Indeed, for all petitioner's efforts to portray the principle of complementary legislation as some sort of renegade legal doctrine, the only cases that display any degree of displeasure with this theory are one decision from the New York Court of Appeals, *Malverty v. Waterfront Comm'n of New York Harbor*, 524 N.E.2d 421 (N.Y. 1988) and a single, twenty-year old federal district court opinion, *C.T. Helmuth and Assoc. v. Washington Metro Area Transit Authority*, 414 F.Supp. 408 (D.Md. 1976). Both cases contain distinguishing elements that make their "conflict" with the New Jersey Supreme Court far less than first appears, and neither, in the context of our federal system, warrants this Court's exercise of its certiorari jurisdiction.

In *Malverty*, it is first noteworthy that the New York court's ostensible rejection of the doctrine of complementary legislation appears as *dicta*; the appellant there had contended that New York law applied *unilaterally* to the Waterfront Commission, a bi-state agency of New York

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[6] The only decision from a foreign jurisdiction that petitioner discusses accurately is *Redbird Engineering Sales, Inc. v. Bi-state Development Agency of Missouri-Illinois Metropolitan District, et al.*, 806 S.W. 2d 695 (Mo. App. Ct. 1991), which, citing the New Jersey Supreme Court's *Eastern* decision, fully adopted and applied the doctrine of complementary and parallel state legislation to a Missouri-Illinois bi-state compact. 806 S.W. 2d at 701-702. Pet. 20.

and New Jersey.[7] More importantly, the *Malverty* decision was premised upon a unique practice of the New York legislature. As the court noted, that deliberative body, unlike New Jersey or Delaware's, had a history of "expressly stat[ing] that certain legislation" it was enacting was meant specifically to govern the Waterfront Commission, and in the absence of such definitive legislative expression, no law was deemed applicable to that agency. *Malverty* is simply an expression of a discrete legislative determination regarding how obligations are to be imposed on entities established by compacts between New York and other states; it does not conflict with New Jersey and Delaware's shared view that *their* bi-state compacts may be subject to parallel legislation, even if such laws do not necessarily state that they are to apply to such entities.[8]

Grounded in the New York legislature's unique approach to amending or modifying the duties of a bi-state agency, *Malverty* hardly heralds a reason for this Court to grant this writ; indeed, the case actually points to the wisdom of this Court's staying its hand. Petitioner assumes a need to craft a uniform federal approach to interpreting the terms and conditions of each discrete interstate compact. Putting aside the now demonstrated fact that the vast weight of judicial authority supports the means of construction employed by the New Jersey Supreme

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[7] Indeed, it is worth observing that *Malverty* did not purport to overrule an earlier New York High Court case, *Agesen v. Catherwood*, 260 N.E.2d 525, 528 (N.Y. 1970) which held that "the two [compact] states, by bilateral action, may always regulate [a compact] authority action."

[8] Similarly, *C.T. Helmuth* dealt with certain discrete features of Virginia, Maryland, and District of Columbia laws regarding access to public records. Each jurisdiction, the court noted, featured key differences in their respective "freedom of information acts," leading the court to conclude "[w]hatever force [the doctrine of parallel legislation] may have in the situation in which the various laws involved are identical, it is plainly unmeritorious here, where the laws involved *differ in not insignificant respects*." 414 F. Supp. 408, 410, and n.5 (emphasis added).

Court below, the problem with petitioner's argument is that it ignores the essential fact that interstate compacts are created primarily to effectuate and foster local interests. Each compact is an individual creation of the compact states and, as such, they are unlikely to feature uniform terms and are ill-suited to uniform principles of legal construction beyond those applied by the courts of the respective compact states. As Justice Frankfurter sagely put it in *Petty v. Tennessee-Missouri Bridge Comm'n*, 359 U.S. 275 (1959):

> Since a Compact comes into being through an Act of Congress, its construction gives rise to a federal question. . . . But a federal question does not require a federal answer by way of a blanket, nationwide substantive doctrine where essentially local interests are at stake. . . . A Compact, is after all, a contract. Ordinarily, in the interpretation of a contract, the meaning parties attribute to the words governs the obligations assumed in the agreement. . . . [T]he language they employed in the Compact, not modified by Congress, should be limited to the legal significance that these States have placed upon such language, not to avoid the obligations they undertook, but to enforce the meaning of conventional language used in their law.

359 U.S. at 285 (Frankfurter, J., dissenting) (citations omitted).

Under this analysis, it is simply not material what construction the New York courts may put upon the Waterfront Commission Compact; what does matter are the rules of law employed by the courts of New Jersey and Delaware to interpret the Bay Authority Compact. And these, as we have shown, are entirely congruent: both Compact states have held that complementary and parallel expressions of policy, enacted by their respective legislatures, are applicable to the bi-state agency they have formed, with the consent of Congress. Their judgments in this regard need not be scrutinized or reviewed by this Court.

III. PETITIONER'S CLAIM THAT THE DECISION BELOW WILL LEAD TO "DISCORD" AMONG INTERSTATE AGENCIES IS ENTIRELY SPECULATIVE AND CONJECTURAL, AND DOES NOT PROVIDE SUFFICIENT BASIS FOR THIS COURT'S REVIEW

Petitioner insists that the decision of the New Jersey Supreme Court will, if unreviewed, "create enormous confusion and uncertainty as to which particular laws apply to interstate authorities," and lead to " 'discord and a destruction of the purposes for which . . . bi-state agencies are formed'." Pet. 22, 21, *quoting* Garabaldi, J., dissenting, at App. 20a. Nothing in the record at present even remotely supports this dire view, save for the solitary and subjective musings of the single dissenting Justice of the New Jersey Supreme Court. Thus, petitioner's grave warnings of the consequences of this decision reduce to a series of hypothetical and highly speculative scenarios, a "parade of horribles" of what *might* befall interstate agencies if they are subject to the doctrine of parallel legislation.

Such an ephemeral record does provide adequate basis for this Court's intervention. As this Court has noted, "[a] federal question raised by a petitioner may be 'of substance' in the sense that, abstractly considered, it may present an intellectually interesting and solid problem. But this Court does not sit to satisfy a scholarly interest in such issues." *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 74 (1955). The present Petition, at best, invites nothing more than "abstract" and "scholarly" speculation on the part of this Court.

Moreover, the claim that the DRBA's mission, as set forth in the Compact, will be eroded or compromised if it is required simply to recognize the right of its employees to negotiate collectively—the only concrete issue the Court has before it at present—is difficult to fathom. The Bay Authority is charged with the maintenance and operation of the Delaware River and Bay crossings between the

States of Delaware and New Jersey south of the boundary line between Delaware and Pennsylvania, and the development of any transportation or terminal facilities within that region. App. 56a, Article IV(a), (b). The parallel labor policies obtaining in the Compact states *prevent* labor disputes and unrest, by prohibiting employee strikes and channelling discourse into the cooperative arena of collective negotiations.[9] Far from sowing the seeds of "discord and . . . destruction," application of the parallel labor policies of Delaware and New Jersey to the DRBA can only aid in the regular and uninterrupted flow of traffic and commerce across the Delaware River and Bay.

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[9] Further, mirroring federal law, the labor policies of Delaware and New Jersey do not require the Bay Authority to accede to any of the proposals that may be advanced by the respondents in collective negotiations. Thus, petitioner's ability to "fix the terms and conditions of employment" remains, in the end, essentially undisturbed.

CONCLUSION

"[T]he delicacy of interstate relationships and the inherent limitations upon this Court's ability to deal with multifarious local problems have naturally led to exacting standards of judicial intervention" by this Court. *State ex rel Dyer v. Sims*, 341 U.S. 22, 27 (1951). This petition simply does not meet these exacting standards. It asks the Court to pass upon a question of compact interpretation that has been long settled by the relevant compact states in a consistent, considered manner; a doctrine that conforms fully to the terms of the Compact here at issue, does not contravene this Court's precedents, and does not materially conflict with any state or federal decisional law. For all these reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

THOMAS T. RUTHERFORD
General Counsel to the Grand Lodge of the Fraternal Order of Police
320 Gold Street S.W.
Suite 1000
Albuquerque, NM 87103
(505) 842-6700
Counsel for Amici Curiae, *Grand Lodge of the Fraternal Order of Police*

BRUCE E. ENDY *
CHARES T. JOYCE
SPEAR, WILDERMAN, BORISH, ENDY, SPEAR AND RUNCKEL, P.C.
230 South Broad Street
Suite 1400
Philadelphia, PA 19102
(215) 732-0101
Counsel for Amici Curiae, *Fraternal Order of Police, Penn-Jersey Lodge 30*

* Counsel of Record

APPENDIX

APPENDIX

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CAMDEN COUNTY

Docket No. 7-7547-96
A. D. #———

FOP LODGE 30, *et al.*,
Plaintiffs,

vs.

DELAWARE RIVER PORT AUTHORITY,
Defendant.

TRANSCRIPT OF HEARING

Place: Camden County Superior Court
Hall of Justice
Camden, NJ 08103

Date: December 20, 1996

BEFORE:

HON. SAMUEL L. SUPNICK, J.S.C.

TRANSCRIPT ORDERED BY:

CHARLES T. JOYCE, ESQ. (Spear, Wilderman)

APPEARANCES:

BENJAMIN EISNER, ESQ. (Spear, Wilderman)
CHARLES T. JOYCE, ESQ.
Attorneys for Plaintiffs

SCOTT F. COOPER, ESQ. (Blank, Rome, Comisky & McCauley)
SAMUEL M. FIRST, ESQ.
Attorneys for Defendant

[2] THE COURT: Number 44, FOP Penn Jersey Lodge 30 v. Delaware River.

MR. EISNER: Here for the plaintiff, Your Honor.

MR. FIRST: For the defendants.

THE COURT: Come forward. Enter your appearances please.

MR. COOPER: Good morning, Scott Cooper with Blank, Rome, Comisky & McCauley and Sam First.

THE COURT: I'm sorry. Scott what?

MR. COOPER: Cooper, C-O-O-P-E-R. We're the defendant and the moving party.

THE COURT: Okay.

MR. EISNER: Your Honor, Benjamin Eisner, for the plaintiffs, of Spear, Wilderman, and I have with me today to introduce to the Court Charles Joyce of my firm, a member of the Bar of the Commonwealth of Pennsylvania who has been admitted pro hac for the purposes of this matter.

MR. JOYCE: Good morning, Your Honor.

MR. COOPER: If we may, Your Honor—

THE COURT: Did you enter your appearance?

MR. FIRST: Sam First, Blank, Rome, Comisky & McCauley for the defendant FOP Lodge—I'm sorry—for the defendant DRPA.

THE COURT: Okay.

MR. COOPER: As Your Honor has—

[3] THE COURT: It's DRPA's motion.

MR. COOPER: That's correct, and it is a motion for summary judgment, but it's in effect a motion to dismiss the underlying complaint and to ask that you deny the request for equitable relief that's before the Court. This case presents a similar issue to when we were before Your Honor back in April in which a theory of liability is being asserted against the Port Authority and we have—

THE COURT: May I just ask a question before you —this was before Judge Davis?

MR. COOPER: Judge Fluharty originally.

THE COURT: It was what?

MR. COOPER: Before Judge Fluharty originally.

THE COURT: Where did I see that this was before Judge Davis before and he transferred it to the Law Division?

MR. JOYCE: That's correct.

MR. COOPER: That is correct.

MR. JOYCE: Your Honor, if I may, that's correct. He transferred it to the Law Division sua sponte.

THE COURT: Why did he do that?

MR. JOYCE: The Court did it on its own, Your Honor. We don't know why the Court did it.

THE COURT: All right. Go ahead.

MR. COOPER: We wondered the same thing, especially in view of what they're asking for.

[4] THE COURT: I mean in view of the relief, that's why I say that. I don't understand it.

MR. COOPER: The quick—I think both sides have the same question.

MR. JOYCE: That's correct, Your Honor, but both sides also I think are in agreement that—

THE COURT: Maybe you gave him big briefs and he didn't want to read them.

MR. JOYCE: We apologize, Your Honor. It's an important case.

THE COURT: I know. You were before me before with regard to—

MR. COOPER: With another one of these—

THE COURT: It was a different matter, yes.

MR. COOPER: Different matter, but basically, we begin in the same point which is a question of whether what would undoubtedly be a very valid legal theory in any other arena except that the defendant is a bistate instrumentality. The question is where are we going? I just want to note for the record up front we are not counsel involved in the underlying labor negotiations. So what we know of what happens there or don't happen, the facts will be somewhat shorter, but I think it ultimately won't make a difference based on the legal theory here. There's no dispute that the FOP has been the bargaining representative for the police going back into

[5] the mid-1970's and that the FOP and the DRPA currently do not have a present labor contract of any kind. It expired in August of I believe 1995—of this year after a mutual extension. And the question before the Court right now is whether the plaintiff's request to do things, number one, make a finding that our client has violated either the New Jersey Constitution or some parallel set of laws in Pennsylvania—

THE COURT: Your contention is that there is no complementary law or parallel legislation that exists between the two states.

MR. COOPER: That is correct. That is the—

THE COURT: Inasmuch as you're a bistate agency, set up through the authority of a special act of Congress.

MR. COOPER: That is correct.

THE COURT: And which you're a separate agency, right?

MR. COOPER: That would be the—

THE COURT: Your adversary contends that there is parallel—

MR. COOPER: That is correct.

THE COURT: —legislation.

MR. COOPER: That's correct, and I think for the record, it's important to note that because this is such a complicated issue, the cases continue to evolve in terms of the legal theory. I think when it first started, it was a claim [6] that we had directly violated the New Jersey Constitution. As we filed our first set of papers and point out you can't bring such a claim, I think the plaintiffs have properly advanced the theory to say, no, you've got to look at the policy of the two states and see if we can create some kind of a remedy here in the Law Division. And that is why in our reply brief, we have pointed out to the Court just how unworkable that would be and more importantly that Pennsylvania and New Jersey have never consented to such a concept. Public sector labor rights exist as we've pointed out in a very intricate working with executive agencies ranging from executive directors to labor boards to determining what rights have been

violated in the process of collective negotiations. None of that can exist if the remedy the plaintiffs are looking for is allowed to go forward, and that's why we've asked that the case be dismissad right now.

THE COURT: What would you say the status is at this time?

MR. COOPER: The status as I understand it—

THE COURT: Is there any representation that exists at the present time?

MR. COOPER: Yes, I mean there—

THE COURT: Representation in what regard?

MR. COOPER: In the regard—

THE COURT: Do you recognize any representation?

MR. COOPER: Yes, of course we do. We're dealing [7] only with—

THE COURT: All right. Now, what is the status or the condition of the situation now?

MR. COOPER: As I—

THE COURT: I know you contend that there is no contract. Now, their argument is that unilaterally, the commissioners enacted certain work—I don't know what they were that were enacted. I don't think they were set forth, but that's unimportant, and there's been unilateral action.

MR. COOPER: That's correct.

THE COURT: All right.

MR. COOPER: Our position is is that absent a contract, that's exactly right.

THE COURT: Now, you say that they have to live by the unilateral action?

MR. COOPER: Until such time as the parties get back to the table, that's correct.

THE COURT: So that you can modify the agreement in any respect that you see fit by merely terminating it.

MR. COOPER: Actually, it's just to the contrary. As long as there's a contract in place, we're powerless to do anything except live by the agreement—

THE COURT: I say but it—

MR. COOPER: —which is why it's so important, and I think both sides knew it was so important.

[8] THE COURT: But the contract had a provision in it that permitted termination at the end of its term, didn't it?

MR. COOPER: And in fact, that's a critical point in this case, that this contract unlike previous contracts did not say that there would be, as is often the case in traditional labor cases, a right of successorship or an automatic right of renewal at the end, and I think—

THE COURT: That was left out sometime—

MR. COOPER: Sometime in—

THE COURT: —after 1990 I think was indicated.

MR. COOPER: That's correct, and again—

THE COURT: Was that deliberately left out or was it by accident or does anybody know?

MR. JOYCE: May I respond to that, Your Honor?

THE COURT: Yes.

MR. JOYCE: It's unclear from the record why that was left out, and I would hold that the termination of a renewal clause is ambiguous at this point because although it doesn't have the standard language that says the contract will continue in force and effect from year to year, it says the only way the contract is terminated is if either party gives notice to terminate the contract. So it's somewhat unclear, and also, it's undisputed that both patries in the fall of 1995 agreed to renegotiate a new contract. So there was an agreement going forward to renegotiate a new contract. They have admitted that [9] in response to our material statement of fact number 19. So I think —we think it's immaterial whether or not the contract terminated by its terms on December 10th, 1995 or not. The parties had an agreement to go forward and negotiate a new agreement. They in our view breached that agreement, breached that promise to renegotiate the contract, and that's why we're here.

MR. COOPER: Your Honor, our position is obviously that an offer to sit down and continue negotiation

for something that will happen when you do not have a legal obligation to make another contract at the end of this one is the same as when any other two parties know that a contract's about to expire.

THE COURT: Tell me, let me ask you this. Suppose you sat down and you attempted to negotiate and you couldn't agree. What then?

MR. COOPER: Then the parties are free to go their own way unfortunately.

THE COURT: But what would that have to do with the initial recognition that you gave, the fact that you voluntarily on a mutual basis recognized the union when they offered—when they submitted a basis for recognition? You conducted or allowed to be conducted through the three A's an election in order to determine who the appropriate bargaining agent for the employees would be, and they were appropriately [10] designated. I know that there is no law—I don't think there's any law that exists other than as I recall except under the NLRB insofar as recognition is concerned. I don't think the State has any such—what is it, three years under NLRB or five years? Three years?

MR. COOPER: It's usually a three-year contract.

THE COURT: But NLRB doesn't apply here I know.

MR. COOPER: It does not apply here.

THE COURT: But you have the recognition. You've had a practice of contracts over the years. You've negotiated the contract with this group right along, and you contend that you're in a position and that there's no complimentary law. There's not a law that exists between the two states that entitles them to—

MR. COOPER: I think that against the background of the sovereign immunity that we have raised here, that until the legislatures get around quite candidly to passing the laws that they have in New Jersey and in Pennsylvania created—

THE COURT: Well, your adversary argues that there are parallel or complimentary laws, and they also set

forth the provisions both in the Pennsylvania law that was set up in connection with governmental employees that requires negotiations in good faith as well as the fact that the New Jersey—

MR. COOPER: Correct.

[11] THE COURT: —Constitution which permits—recognizes the right of government employees to organize also recognizes that obligation of good faith. You mean to say—did I understand your argument that unless they have a constitutional provision, that since we have a constitutional provision here, that there are no parallel or complimentary law?

MR. COOPER: No, Your Honor. In fact, that's the way the case started, but I think where we are now is and the one part that's missing I think in the analysis here—you're absolutely right. New Jersey has a set of laws that nobody can debate, and you have certain rights as a public sector employee, and 95 percent of those are the same in Pennsylvania. The crucial difference is those rights don't exist in a vacuum. They exist to the extent that a government agency, whether it's the Pennsylavnia Labor Relations Board or our PERC, has oversight jurisdiction not only to suggest that those rights exist but to interpret them and to enforce them when the parties break down. The thing that is missing in this case is any government agency that would have oversight authority to monitor what I would call the traditional labor concepts, that New Jersey and Pennsylvania clearly recognize for their own domestic employees. That's the critical piece that's missing. New Jersey can pass all the laws it wants subject to PERC regulation for our employees, no dispute. Pennsylvania can do [12] the same thing. Why? Because there's a Pennsylvania Labor Relations Board that says, this is what it means when you bargain in bad faith; if you don't like it; you go to the commissioner; he'll issue a complaint; you have a mini-trial; you can appeal it and you do all those things. What the plaintiffs cannot point to in this case is any such government agency, whether it's the NLRB or PERC or the PLRB. Indeed they

concede none of these agencies affect it, and that's the critical difference. The concepts—

THE COURT: You don't think—

MR. COOPER: The concepts, if I may, that we're throwing around in Court, they're terms of art. The terms of art don't exist unless you got an administrative structure to enforce them and to create them. There is no such thing, and that's not a problem. It's just a separation of powers issue.

THE COURT: I don't know—I don't know if that question has ever come up in connection with any of the other governmental employee contracts, that situation has ever arisen, but I would like to ask this question. Wouldn't you think that the Courts could step in to fill a vacuum?

MR. COOPER: Well, obviously, I mean that is the million-dollar question in this case, and the plaintiffs say yes and we obviously say no for the reasons I think we set forth substantially in our reply brief. It's not just a question of stepping in and creating some kind of an equitable [13] remedy. The question is have the legislatures decided to give the executive branch or some entity the authority to create the scheme that exists in New Jersey and exists in Pennsylvania and obviously exists at the federal level at the NLRB? Yes, the Court could in some manner make it up as we go along, and I know that this is, as I said in our brief, the uncomfortable position they want us to be in to suggest this Court can't do it. Obviously, you can come up with a remedy. The question isn't whether you can. The question is whether you should.

THE COURT: The area or the extent to which a Court could go—I mean I'm not—

MR. COOPER: Yes.

THE COURT: I can appreciate the fact that there could be an area that the Court would certainly—

MR. COOPER: Correct.

THE COURT: —be exceeding its authority, or at least it would be overreaching.

MR. COOPER: And, Judge, we contend obviously that in an area such as this where the backdrop in the defense really is a form of sovereign immunity, that to the extent you can't find the consent of the two states to do what they are asking, this is an extraordinary remedy because as you pointed out, we will be making this up as we go along. I mean when you appoint mediators, will your law clerk be a fact-finder, is somebody from this Court going to sit at the table? All the things that [14] would be so garden variety if we were before PERC, because they've got the agency, they've got the funding, they have the expertise in the field. I mean I suppose the Superior Court could make this up, but the whole point of this is that Pennsylvania and New Jersey have never ever envisioned that the trial Court of either state would in the first instance be the party to do what routinely happens at PERC and at the PLRB, and as I say, it's an extraordinary leap to give them what I know we all want which is some sense of fairness here. When New Jersey and Pennsylvania get around to creating the kind of agency structure as they've done with the commission board and as exists at PERC or the PLRB, yeah, they would have a claim, and we would have to go through all the other things you have to do. But until that day comes, I respectfully submit that it is wrong to ask the Court to create this as we go along because that's what this will be.

THE COURT: Yes, but you're moving—at this point, you're moving for a summary judgment.

MR. COOPER: That is because, Your Honor, there is nothing left to do in this case. If you allow either the injunctive relief that they're asking for—and I'm not sure how this would happen. We would be forced back to the table I guess under the supervision of the Court. But if the complaint can go forward, that we have bargained in bad faith as I believe is what Count 2 has presently pled, again that is a [15] term that doesn't mean anything in the public sector outside of the administrative agency. As I said, in Pennsylvania or New Jersey, you can't walk forward and argue you're bargaining in bad faith under

the statute. You've got to convince the commissioner that you have violated the act, and the commission becomes the advocate after issuing the complaint, all the things that exist in New Jersey as well as at the NLRB. Now, a point here is I just don't see how the Court fits into that mix. I mean would Your Honor then be the prosecutor if we have been found to violate in bad faith? And then who do we try our case to? All of that—and I don't even want to get into all the detail.

THE COURT: I don't know. The Court might have to conduct a full hearing in connection with that. As I say, you have now a motion to dismiss the action in its entirety—

MR. COOPER: That's correct.

THE COURT: —on the basis of the fact that you say none of these things could possibly occur.

MR. COOPER: I'm not saying it couldn't occur. That's what I'm most afraid of. I actually think the Court probably could fashion a remedy, but the point is your remedy wont's look anything like the administrative scheme that the states have debated up in Trenton or in Harrisburg or even in Wasington, DC. It won't look anything like that.

THE COURT: Yes. Well, I can't jump to that [16] conclusion because I really—

MR. COOPER: But unfortunately, Judge, what I'm suggesting is you'll have to because if this complaint goes forward, there's really no discovery to be had here. The only question is can the Court get involved to implement the kind of procedures that would exist if we were a purely domestic employer here in New Jersey in the public sector. And from day one, that will implicate the Court directly, whether it's sitting down and sending a mediator, whether it is conducting findings of fact. This isn't one of those lawsuits where we get by the motion to dismiss and the parties go away and deal with discovery and we come back to the Court in six or seven months. The Court will be immediately brought into this, and as I say—and I keep repeating—you'll be making this up

as we go along. That is not what any legislature has ever intended to have happen in this area. Parties are supposed to know the procedural rights going in. We'll be making this up as we go along. It's not what Trenton's envisioned. It's not what Harrisburg ever envisioned, and until they sit down and give us some more guidance, there isn't a legal theory that can go forward here without the remedy being worse than the underlying problem.

THE COURT: In what respect are you looking for them to give you some kind of guidance? Would that be by enacting legislation that would be on a complimentary or a mutual basis?

[17] MR. COOPER: I think in all candor, we're beyond complimentary legislation.

THE COURT: Yes, I think so.

MR. COOPER: What I'm looking for is an agency that would have the power and the resources to do what would happen if we were a purely domestic public employer in New Jersey or in Pennsylvania. I mean there's no dispute. If you're in New Jersey, you go to PERC. Everybody knows what your guidelines are. There's an extensive administrative code on this point. There are statutes that tell you what there are. There is judicial case law that talks about how to interpret the Public Employer/Employee Relations Act. That's the kind of thing we're looking for. That's what's missing in this case. It's not a complimentary legislation. There's no executive agency.

THE COURT: You don't necessarily say that the Court couldn't provide that, but you're questioning whether it could provide it—

MR. COOPER: Whether you should.

THE COURT: —in an effective manner in its entirety.

MR. COOPER: I'm raising two points; number one, whether you should and, number two, whether New Jersey and Pennsylvania have ever consented to allowing a trial Court to do what you would in effect have to be doing going forward from this day.

[18] THE COURT: Let me hear from your adversary.

MR. JOYCE: Thank you, Your Honor. Your Honor, first of all, it seems to me that DRPA's argument at this stage in the proceedings boils down to the proposition that because these rights that we are alleging we have may be somewhat difficult to effectuate and enforce, these rights don't exist. Well, that argument ignores the long history of New Jersey Courts stepping in, enforcing and protecting both private sector and public sector labor rights precisely because there was no administrative agency that was either able or willing to enforce those rights. Remember, Your Honor, that between 1947 when the New Jersey Constitution was enacted giving the public sector labor protections and 1968 when the administrative agency was developed, the Courts determined what the rights were of public employees.

THE COURT: Even before the NLRB.

MR. JOYCE: No; before the New Jersey Public Employer/Employee Relations Act.

THE COURT: PERC, okay, sure.

MR. JOYCE: Exactly, Your Honor.

THE COURT: Okay.

MR. JOYCE: In 1964, the New Jersey Turnpike Authority case, the Court ruled that public employees don't have the right to strike.

THE COURT: What happened in Pennsylvania?

[19] MR. JOYCE: Excuse me?

THE COURT: What happened in Pennsylvania?

MR. JOYCE: Well, in Pennsylvania, Your Honor, there was a legislative scheme. So Courts did not have to get involved, but New Jersey Courts have historically gotten involved. And it had no hesitancy in getting involved where there's no administrative agency. And, Your Honor, to this very day, the Courts get involved where there's no administrative agency in protecting labor rights. Just last May in a case that Mr. Eisner actually argued and won in the Appellate Division which we didn't cite in our brief—but it's *South Jersey Catholic*

Teachers Association v. The Lay Diocese of Camden, 290 New Jersey Super 359. The Appellate Division ordered the Chancery Court to order and oversee a union representation election among lay Catholic teachers precisely because no administrative agency either could or would assert jurisdiction over those workers. So this is not a novel proposition of law we're advancing here. This is entirely within the competence of this Court, and it's what Courts have historically done where there is no administrative agency to step in and effectuate the rights.

As a matter of fact, in one of the cases that the defendant cites in their brief, in one of the PERC decisions, the DRPA/PERC decision, PERC says in cases such as this where there's complimentary legislation, we can't, PERC can't assert [20] jurisdiction; rather State Courts must decide these disputes. So there's precedent for this, Your Honor, and the argument also—their argument also overlooks the fact that this is a Court that can exercise equity powers. You have enormous flexibility, enormous creativity to craft a remedy here. You can, as New Jersey Courts have done in the past, look to federal law to determine what the rights and remedies are. Under the *Molanany* (phonetic) case in the New Jersey Supreme Court, that's what they did. You can appoint a special master to oversee negotiations. You can ask the triple A to appoint an arbitrator if the parties cannot reach an agreement after good-faith negotiations, trying to reach an agreement over the terms and conditions of employment. The Court's authority here is limited only by its imagination, and there are enormous sources of law and sources of authority that you can dwell upon. It is no answer to say because it may be difficult to do, that these law officers who enforce the laws of the New Jersey and Pennsylvania have no rights. It's just no answer to say that.

And if I might, Your Honor, briefly talk about—it's clear to me that you've read our papers very carefully, and I appreciate that. But if I might briefly talk about the whole issue of complimentary regulation and this

Court's ruling in the *Ruggiero* case. I think that the *Ruggiero* case is different from this case. In the *Ruggiero* case, as Your Honor [21] will recall, you found clear differences between the New Jersey Whistle-Blower Act and the Pennsylvania Whistile-Blower Act—

THE COURT: I think there were differences, yes.

MR. JOYCE: Yes. Most similarly, Your Honor, there were two different statutes of limitations. If Mr. Ruggiero would have brought this action in Pennsylvania, he would have been time barred, but in New Jersey, he wouldn't have been time barred. So you couldn't apply that law to the bistate agency. That clearly would have been improper. Also, Your Honor, your decision in *Ruggiero* came down one month before the New Jersey Supreme Court came down with its decision in *Bunk v. Port Authority*, a decision that the defendants don't even address in either their original brief or their reply brief. The *Bunk* case is at once the most expansive and the most recent application of the principle of parallelism—

THE COURT: Which case?

MR. JOYCE: *Bunk v. Port of New York and New Jersey*, Your Honor. It was cited—

THE COURT: Yes, I have it.

MR. JOYCE: —in our brief. The *Bunk* case is extremely important, Your Honor, and I think it's a precursor of what is to come, the *Local 68* case, which we rely on heavily in our brief and as I understand defendant says we can't cite because it hasn't been approved for publication by the Appellate Division, is currently on appeal in the New Jersey [22] Supreme Court, and a decision is imminent in that case. Oral argument was held three months ago, and I've spoken to the attorney that is arguing that case, and he believes a decision is coming out any day. If the Court—if the New Jersey Supreme Court follows what they did in *Bunk*, they will affirm the *Local 68* case, and the *Local 68* case is on all fours with this case. In that case, the Appellate Division ruled that the employees of the Delaware River and Bay Authority had the right to organize into unions on the basis of the

New Jersey Constitution and the complimentary Delaware Right-to-Organize Statute. It was immaterial to the Court whether or not the laws were identical. They don't have to be identical. They just have to be somewhat similar. It was immaterial to the Court that there was no administrative agency to effectuate these rights. Rather, it was the job of the Court to effectuate those rights, and that's all we're asking you to do, Your Honor. The defendant has raised a parade-of-horribles argument as to what ills will befall them and what problems will ensnare this Court. But all we're asking, Your Honor, is very little. All we're asking is to be treated like every other police officer in New Jersey and Pennsylvania. These officers—and many of them are in this courtroom today, Your Honor—suffer the same frustrations—

THE COURT: Is that why I had a crowded courtroom? I thought I had a few cases today.

[23] MR. JOYCE: They're not wearing their uniforms, Your Honor, but they're here.

THE COURT: I want to tell you you frightened the devil out of me before I got on the bench.

MR. JOYCE: Your Honor, these—

THE COURT: My law clerk came back and said, there are a lot of people out there. I knew there shouldn't be.

MR. JOYCE: It's an important case for them, Your Honor. These officers suffer the same frustrations as their brethren. They have the same dangers, the same work pressures. They enforce all the laws of New Jersey and Pennsylvania, and if Your Honor dismisses this case, it means that they have no laws to protect them in their employment.

THE COURT: Gentlemen, the Court recognizes the problem, and the basic argument of course in connection with the fact that there is no parallel or complimentary law as it exists between the two states, that this Delaware River Port Authority—it can be applied to the Delaware River Port Authority, a bistate agency. In the Court's opinion, that is not so. I think that Pennsylavnia law

and New Jersey law, even though New Jersey makes reference to the right of governmental employees of course to organize and so forth as set forth in the Constitution —I do think that Pennsylvania has set forth parallel or complimentary legislation of a different nature but which is nevertheless—which nevertheless recognizes those [24] same rights and clearly gives public employees a right to freely organize and designate representatives and also to negotiate in good faith. And the fact that there might be some problem which might exist as has been argued by Delaware River Port Authority in connection with no agencies existing whereby—of a nature that would be able to deal with the problems that might be ultimately encountered and resolve them, I think that the Court has the power, the inherent power, to deal with matters of that nature.

The Court's of the opinion that the motion should be denied for the reasons that I have stated. I find that there is a basis for this cause of action proceeding, and I do not find that there is a lack of mutual law that exists between the two states to permit it to proceed. I'm going to deny the motion.

MR. JOYCE: Thank you very much, Your Honor.

MR. COOPER: Your Honor, before we leave, may we ask some—as I prefaced we would, we already are going to need some direction from the Court then. As I say, I'm not counsel for the Authority in negotiations, but I'm not sure whether they're even talking. Where do we now go from here? Is the Court going to appoint some—

THE COURT: I do not—I intend to call a meeting of all counsel immediately after we return the beginning of the year and see if something cannot be set up on a mutual basis as [25] to avoid any further court action and possibly to expedite this matter. Of course, at this point—

MR. JOYCE: That will be fine, Your Honor.

THE COURT: —I'm doing that because I think—and I recognize the importance of proceeding and not waiting for other applications to be made. So immediately

after the first of the year, we will call counsel. I assume you wanted me to call counsel that is—not you.

MR. COOPER: Here in this proceeding and to the extent we need to bring other counsel who may not be admitted to this Bar, we will.

THE COURT: Well, we'll notify you.

MR. COOPER: Please do.

THE COURT: And you can bring in whatever counsel is necessary, and we'll schedule meetings accordingly. I don't have anything scheduled as I know of yet after the first of—do I? I think my calendar's pretty much cleared up.

MR. JOYCE: Your Honor, you set the meeting. We'll be there.

MR. COOPER: Yes, we'll be there.

THE COURT: And we'll call you and set it up on a mutual basis, all right?

MR. JOYCE: Thank you very much, Your Honor.

MR. COOPER: Thank you, Your Honor.

THE COURT: You're welcome.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

BRIEF *AMICUS CURIAE* OF THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY IN SUPPORT OF PETITIONER

HUGH H. WELSH, ESQ.
Deputy General Counsel
PORT AUTHORITY
OF NEW YORK
AND NEW JERSEY
Counsel of Record
The Legal Center
One Riverfront Plaza—Suite 327
Newark, New Jersey 07102
(201) 643-0009
(212) 435-6915

Virgil Mountain, Inc. (212) 779-4046 (L4028)

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BRIEF *AMICUS CURIAE* OF THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY IN SUPPORT OF PETITIONER

INTEREST OF AMICUS CURIAE[1]

The Port Authority of New York and New Jersey (Port Authority), like petitioner Delaware River Bay Authority (DRBA), is a joint governmental agency of two States created

[1] Counsel for the Port Authority authored this brief in whole and no monetary contribution was made by any other person or entity for its preparation or submission.

by Compact. The States of New York and New Jersey created the Port Authority through a Compact, dated April 30, 1921, that was consented to by the Congress of the United States. The Compact pledged the cooperation of the two States and recognized that better coordination of terminal, transportation and other facilities of commerce in the Port of New York would benefit the nation as well as the States. The Port Authority by Compact was given the full power and authority to purchase, construct, lease and/or operate transportation facilities.

The Port District comprises an area of about 1,500 square miles centering around New York harbor. The Port District includes the Cities of New York and Yonkers in New York State, and the Cities of Newark, Jersey City, Bayonne, Hoboken and Elizabeth in the State of New Jersey and over 200 other municipalities, including all or part of seventeen counties in the two States. The Port Authority's facilities include two tunnels and four bridges between the States of New York and New Jersey, an electric rapid transit system, the Port Authority Bus Terminal, the Trans-Hudson ferry service, the Port Authority Bus Programs, four airports, a heliport, the World Trade Center, the Newark Legal Center and Communications Center, six marine terminals, a railroad freight facility, five industrial development facilities, a resource recovery facility, and several regional development facilities, in the Port District.

The Port Authority respectfully urges the Court to grant the DRBA's Petition for Certiorari to review the decision of the New Jersey Supreme Court because that decision ignores the carefully considered methods set forth in the DRBA Compact for imposing duties and obligations on the bi-state agency and establishes a precedent that conflicts with the decisions of the highest court of other states and is harmful to other Compact Clause entities by imposing duties and obligations by inference.

SUMMARY OF ARGUMENT

Because of the unique role of Compact Clause entities in resolving regional problems through cooperation of the compacting States, most Compacts recognize the principal that additional duties and obligations may be imposed on the Compact Clause entities only through legislation where the compacting States each expressly agree. The New Jersey Supreme Court's decision in this case ignores this important principle by imposing an obligation on the DRBA that the Court inferred from "complementary or parallel" laws of New Jersey and Delaware that did not expressly apply to the DRBA or supplement the DRBA Compact.

The New York Court of Appeals refused to apply similar laws of New York and New Jersey to the Waterfront Commission of New York Harbor, a Compact Clause entity, because of the absence of an express agreement between the States that such laws applied to the Waterfront Commission or amended its Compact, *Malverty v. Waterfront Comm'n. of N.Y. Harbor*, 71 N.Y. 2d. 1977;529 N.Y.S. 2d 67; 524 N.E. 2d 421 (1988). The conflict between the New Jersey Supreme Court in the instant case and the New York Court of Appeals in *Malverty* will lead to New Jersey Court's imposing a myriad of additional duties on entities created by a bi-state Compact to which New Jersey is a party that were never considered or intended by the compacting states, thus leading to "discord and a destruction of the purposes for which... bi-state agencies are formed." App. 20a (internal quotation marks omitted).

ARGUMENT

THE PETITION SHOULD BE GRANTED BECAUSE THE NEW JERSEY SUPREME COURT IGNORED THE PROVISION OF THE DRBA COMPACT, COMMON TO MOST COMPACTS, THAT INSULATES THE DRBA FROM DUTIES AND OBLIGATIONS IMPOSED BY THE STATES' LEGISLATURES UNLESS BOTH STATES EXPRESSLY AGREE

This case raises a question of general public importance warranting discretionary review by this Court because the very purpose of establishing independent bi-state agencies under the Compact Clause of the United States Constitution would be compromised if they were subject to the myriad of duties and obligations imposed by "parallel and complementary" state laws.

As recognized by the United States Supreme Court in *Hess v. Port Authority Trans-Hudson Corporation,* 513 U.S. 30, 34, 115 S. Ct. 394, 400 (1994), bi-state entities are created "to address interests and problems that do not coincide nicely either with the national boundaries or with State lines—interests that may be badly served or not served at all by the ordinary channels of National or State political action" (citations and quotation marks omitted). In order to accomplish the mission of resolving regional problems, most bi-state Compacts provide for the independence of the bi-state entity from duties or obligations imposed by single state legislation unless the compacting States expressly agree. This represents an effort by the parent states to resolve such problems by mutual concession. *See, West Virginia ex rel. Dyer v. Sims,* 341 U.S. 22, 27 (1951). Imposing duties and obligations on a bi-state agency when neither legislature

debated or expressly agreed to impose such duties or obligations on the bi-state agency would destroy the cooperative nature of the undertaking of the parent states. *See Bell v. Bell,* 83 N.J. 417, 424 (1980). ("To sanction [unilateral state regulation of a bi-state entity] would lead to discord and a destruction of the purposes for which such bi-state agencies are formed", quoting *Del. Riv. & Bay Auth. v. Pub. Emp. Rel. Com.,* 112 N.J. Super. 160, 165-166 (App. Div. 1970), *aff'd* o.b., 58 N.J. 388 (1971).

In the instant matter, the New Jersey Supreme court ignored the provisions of the Compact between New Jersey and Delaware that insulates the DRBA from duties and obligations imposed by State law unless both States expressly agree. This provision states:

> For the purpose of effectuating the authorized purposes of the authority, additional powers may be granted to the authority by legislation of either State without the concurrence of the other, and may be exercised within such State, or may be granted to the authority by Congress and exercised by it; *but no additional duties or obligations shall be undertaken by the authority under the law of either State or of Congress without authorization by the law of both States.*

The highest Court of New York has rejected the proposition that similar laws of the compacting States can impose obligations on a Compact Clause entity. Rather, the Court recognized the necessity of concurrent legislation made expressly applicable to the bi-state entity before obligations could be imposed on a bi-state entity. In *Malverty v. Waterfront Comm'n of N.Y. Harbor,* 71 N.Y. 2d 977; 529 N.Y.S. 2d 67; 524 N.E. 2d 421 (Ct. App. 1988), the Court of Appeals in New York held that Article 23-A of the

Correction Law of the State of New York, prohibiting discrimination against persons previously convicted of a criminal offense, was inapplicable to the Waterfront Commission of New York Harbor, a bi-state entity of New York and New Jersey. The Waterfront Commission's Compact provides that the Commission "shall have such additional powers and duties as may hereafter be delegated to or imposed upon it from time to time by the action of the Legislature of either State concurred in by the Legislature of the other". N.J.S.A. 32:23-10 (West 1990); N.Y. Unconsol. Laws §9811 (McKinneys 1979). The Court stated:

> New York and New Jersey have agreed, and Congress has authorized the two States, to amend and supplement the Interstate Compact, to implement the purposes thereof, by legislative action of either State concurred in by legislative action of the other State (McKinney's Unconsol. Laws of N.Y. §9870).

Id. at 980; 529 N.Y.S. 2d68.

In considering whether the New York Legislature intended that its unilateral legislation be applicable to the Waterfront Commission, the Court stated:

> In the past, the New York Legislature has expressly stated that certain legislation was amending a certain portion of the "Compact" and that the new law would take effect upon enactment into law by New Jersey of legislation having an effect identical to New York's legislation, unless New Jersey had already done so, in which case the amendment would take effect immediately.

Id., 529 N.Y.S.2d 68.

The Court found that the absence of any reference to the Waterfront Commission in the legislative history or text of article 23-A of the Correction Law, coupled with the absence of an express statement that the Legislature was amending or supplementing the provisions of the Compact between the states, indicated that the New York Legislature never intended article 23-A to apply to the Waterfront Commission. The Court found it irrelevant that New Jersey had enacted a similar statute prohibiting discrimination of persons convicted of crimes (which was "parallel or complementary"). In a quote applicable to the instant matter, the Court stated:

> That the two States have evinced the same, or similar, public policy regarding employment opportunities for former inmates by enacting similar "anti-discrimination" laws *(see,* N.J. Stat Annot. §2A:168A-1 *et seq.* ["Rehabilitated Convicted Offenders Act"]) is not sufficient under the express terms of the "Compact" to render it properly amended or supplemented such that the Commission would be subject to the provisions of article 23-A.

Id., 529 N.Y.S.2d. 68.

The New Jersey Supreme Court departed from sound reasoning of *Malverty* when it imposed a duty on the DRBA that it inferred from "parallel and complementary" state laws of New Jersey and Delaware. By doing so it eliminated much of the insulation Compact Clause entities were intended to have from the State political processes that has proven to be vital to solving regional problems. This will lead to reducing the effectiveness with which Compact Clause entities deal with regional problems. It also creates uncertainly as to what laws

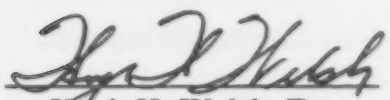
apply to Compact Clause entities, especially in New Jersey and will ultimately lead to discord between compacting states regarding what laws apply to the bi-state entities created by those states. Accordingly we respectfully request that the petition be granted.

CONCLUSION

For the foregoing reasons, *Amicus Curiae,* Port Authority of New York and New Jersey respectfully requests that the Court grant the DRBA's Petition for Certiorari.

Respectfully submitted,

HUGH H. WELSH, ESQ.
Attorney for *Amicus Curiae*
THE PORT AUTHORITY
OF NEW YORK
AND NEW JERSEY

By: 
Hugh H. Welsh, Esq.

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On the Brief:
DONALD F. BURKE, ESQ.

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AMICUS CURIAE BRIEF IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

William H. Roberts*
Peter A. Gold
Jennifer J. Platzkere
BLANK ROME COMISKY & McCAULEY
210 Lake Drive East, Suite 200
Woodland Falls Corporate Park
Cherry Hill, New Jersey 08002
(609) 779-3600

1200 Four Penn Center Plaza
Philadelphia, Pennsylvania 19103-2599
(215) 569-5500

Counsel for *amicus curiae*
Delaware River Port Authority

Of counsel:
Richard L. Brown
John A. Zagorski
Delaware River Port Authority
One Port Center
2 Riverside Drive
P.O. Box 1949
Camden, New Jersey 08101-1949
(609) 968-2407

*Counsel of Record

SMITH-EDWARDS-DUNLAP COMPANY, 2867 E. ALLEGHENY AVENUE, PHILADELPHIA, PA 19134 (215) 425-8900

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AMICUS CURIAE BRIEF IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

The Delaware River Port Authority ("DRPA") files this *amicus curiae* brief in support of the Petition for a Writ of Certiorari filed by Petitioner, The Delaware River and Bay Authority ("DRBA").[1] Both Petitioner and Respondents have consented to the filing of this brief, and the consents have been filed with the Clerk of this Court.

INTEREST OF THE DELAWARE RIVER PORT AUTHORITY AS *AMICUS CURIAE*

The DRPA has an immediate, direct and important stake in this case. Similar in nature to Petitioner DRBA, the DRPA is a bi-state

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[1]The cost of this *amicus curiae* brief was paid in full by the DRPA. Neither the Petitioner nor Respondents contributed to its preparation.

public corporate instrumentality created in 1931 pursuant to the Compact Clause of the United States Constitution, Art. I, § 10, cl. 3, by the legislatures of New Jersey and Pennsylvania. N.J. Stat. Ann. § 32:3-1 *et seq.*; Pa. Stat. Ann. tit. 36, § 3503 *et seq.* (the DRPA's Compact). Congress subsequently approved of this Compact. Pub. Res. No. 26, ch. 258, 47 Stat. 308 (1932).

Originally named the Delaware River Joint Commission[2], the DRPA was created for the purpose of constructing, operating and maintaining certain interstate transportation routes between New Jersey and Pennsylvania. The DRPA was authorized, *inter alia*, to build bridges, to establish connecting roads and to provide transportation services within the Delaware River Port District. N.J. Stat. Ann § 32:3-2; Pa. Stat. Ann. tit. 36, § 3503, Art I. At the present time, the DRPA operates four interstate bridges between New Jersey and Pennsylvania that span the Delaware River (the Benjamin Franklin Bridge, the Walt Whitman Bridge, the Commodore Barry Bridge and the Betsy Ross Bridge). Through its wholly-owned subsidiary, the Port Authority Transit Corporation ("PATCO"), the DRPA operates a high-speed train line between Philadelphia and Lindenwold, New Jersey.

The DRPA is also authorized to engage in various economic development projects in the Port District. The magnitude of the scope of the DRPA's activities is illustrated by the fact that, in 1996, approximately 98,558,000 vehicles crossed the DRPA's bridges, 10658,000 passengers rode PATCO's trains, and the DRPA's net assets from operations were $322,306,000, of which $110,930,000 was derived from bridge revenues.[3]

The DRPA's Compact reflects that New Jersey and Pennsylvania specifically authorized the DRPA to undertake *only* those activities and operations that have been approved by the governments of

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[2]In 1951, New Jersey and Pennsylvania enacted joint legislation changing the name to the DRPA. N.J. Stat. Ann. § 32:3-1; Pa. Stat. Ann. tit. 36, § 3503.

[3]DRPA, *Comprehensive Annual Financial Report for the Year Ended December 31, 1996*, at 32, 54-55 (1997).

both states. In creating the DRPA, New Jersey and Pennsylvania formed a *single* agency of *both* states and, accordingly, surrendered a portion of their own sovereignty, *including* the power unilaterally to impose and enforce their own state laws and policies. *United States v. Belkins*, 304 U.S. 27 (1938).

As a Congressionally-approved bi-state compact entity, the DRPA must be vigilant and attempt to ensure that the courts of each its creator states properly uphold and comply with the terms of its Compact. The DRPA submits that, in this case, the New Jersey courts have overstepped the boundaries defined by the legislatures of New Jersey and Delaware in the DRBA's Compact by authorizing unilateral application of New Jersey's labor policies on the DRBA, without Delaware's express consent. In doing so, New Jersey, through its courts, has established precedent that may apply to interpretations of the DRPA's Compact. In fact, the DRPA is currently defending labor litigation in the New Jersey courts brought by the Fraternal Order of Police, Penn-Jersey Lodge 30 ("FOP"),[4] which has filed a brief *amicus curiae* in support of Respondents in this case. The FOP has already relied upon the New Jersey Supreme Court's decision in this case as authority to support its request that New Jersey impose "labor policies" — specifically, post-impasse binding interest arbitration procedures — on the DRPA, notwithstanding that Pennsylvania has never consented to the application of such "policies" to the DRPA.

SUMMARY OF THE ARGUMENT

The New Jersey Supreme Court's decision in this case potentially exposes the DRBA, the DRPA and over 150 bi-state or interstate compact entities nationwide to inconsistent rules for determining whether consent exists for imposing a single state's laws or policies on them. The rule, analysis and level of scrutiny applied by the New Jersey Supreme Court in its decision in this case differs substantially and materially from the rule, analysis and level of

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[4] *Fraternal Order of Police, Penn-Jersey Lodge 30 v. DRPA*, Docket No. L-7547-96 (N.J. Super. Ct. Law Div.).

scrutiny applied by courts across the country, including Pennsylvania's courts. As a result, the danger exists that the DRPA may be subjected to entirely different, and potentially conflicting, creator-state obligations, depending upon whether a dispute is decided by the courts of New Jersey or by the courts of Pennsylvania. The New Jersey Supreme Court's decision destroys the framework of the unique agreement between New Jersey and Delaware creating the DRBA and, thus, violates the Compact Clause of the United States Constitution, the Supremacy Clause of the United States Constitution, and the doctrine of separation of powers. This Court should grant review to protect the integrity of these compacts by preventing creator states from unilaterally — and impermissibly — imposing their laws or policies on bi-state or interstate compact entities without the express consent of the legislatures of the other creator states.

ARGUMENT

I. THE ISSUE PRESENTED IS IMPORTANT AND FUNDAMENTAL AND POTENTIALLY AFFECTS OVER 150 BI-STATE OR INTERSTATE COMPACT ENTITIES THROUGHOUT THE NATION.

Congress has authorized over 150 bi-state or interstate compacts, 32 of which were created in part by the State of New Jersey. The Council of State Governments, *Interstate Compacts & Agencies* 56-93 (1995)[5]. These compact entities carry out essential governmental objectives, including facilitation of interstate education, interstate crime control, and, most significantly, substantial interstate trade and commerce. *Id.*

Nationally, compact entities collectively employ over 13,000 persons. *Id.* at 1-55. New Jersey co-created compact entities alone employ nearly 10,000 people.[6] The four (4) major bi-state entities of

[5]A listing of bi-state and interstate compact entities is reprinted and attached hereto as Appendix A.

[6]See Chart of New Jersey Co-Created Bi-State and Interstate Compact Entities, Appendix B.

which New Jersey is a co-creator — the DRBA, the DRPA, the Port Authority of New York and New Jersey, and the Waterfront Commission of New York Harbor — are either parties to this case (as Petitioner) or appear in these proceedings as *amicus curiae*. All urge this Court to grant review.

In particular, these bi-state entities and their employees are substantially affected by the New Jersey Supreme Court's decision because it can be, and has already been, interpreted as creating new precedent for applying the general "policies" of a single creator state to a bi-state entity *without the consent of the legislature of either creator state.*

By its decision in this case, New Jersey, through its Supreme Court, has overstepped the previously well-established rule that creator states may not *unilaterally* impose additional duties or obligations on their bi-state entities that would contravene the terms of their compacts, absent express authorization from *both* states' legislatures. *C.T. Hellmuth & Assocs. v. Washington Metro. Area Transit Auth.*, 414 F. Supp. 408, 409-10 (D. Md. 1976). Future application of the New Jersey Supreme Court's decision could have the following effects on the DRPA and similarly situated bi-state and interstate compact entities:

- Pennsylvania and New Jersey will each utilize different rules or standards for determining whether they may apply their state laws and/or policies to the DRPA;
- Plaintiffs — not the state legislatures — will select the applicable state laws and/or policies that apply by forum-shopping in New Jersey courts, which will subject bi-state and interstate entities to an inconsistent and broader spectrum of obligations, including mere expressions of "public policy";
- Through its court system, New Jersey will unilaterally apply its own substantive laws and policies to the DRPA and impose them on Pennsylvania, in violation of the Compact Clause of the United States Constitution;

- In doing so, New Jersey will have contravened the DRPA's Compact — thus violating federal law — and, at the same time, will have created new federal law that has not been approved by Congress pursuant to the formal amendment procedures applicable to bi-state and interstate compact entities;
- Unless this Court grants review to strictly enforce the Compact Clause, each creator state may continue to develop its own, potentially conflicting, rules for determining when it may unilaterally apply its own state laws to its bi-state and interstate entities, the application of which will depend on where the plaintiff may have elected to initiate the lawsuit;
- Lawsuits may be filed by the creator states in this Court under its original jurisdiction to enjoin the application of the other creator states' laws and policies to their jointly-created bi-state and interstate entities.

This Court should grant review to protect the integrity of bi-state and interstate compacts and to establish a clear standard that prevents creator states from unilaterally imposing their laws or policies on such entities without the express consent of the legislature of the other creator states.

II. THIS COURT SHOULD GRANT REVIEW TO REQUIRE ADHERENCE TO THE TERMS OF THE UNIQUE AGREEMENTS ENTERED INTO BY STATES THAT HAVE CREATED INTERSTATE COMPACT ENTITIES.

A. The New Jersey Supreme Court's Decision Directly Conflicts With the Decision of the Pennsylvania Courts.

Absent express authorization, a bi-state entity such as the DRBA or the DRPA can only be subject to a single state's laws where the legislatures of *both* states have clearly given their approval. *See, e.g., Port Auth. Trans-Hudson v. Feeney*, 495 U.S. 299, 314 (1990) (Brennan, J., concurring); *Delaware River Port Auth. v. Comm. of Pennsylvania*, 137 Pa. Commw. 170, 173, 585 A.2d 587, 588 (1991); *Nardi v.*

Delaware River Port Auth., 88 Pa. Commw. 558, 490 A.2d 949, 950 (1985). The New Jersey Supreme Court's decision in this case creates a conflict between New Jersey and Pennsylvania with respect to which state laws — and "policies," if any — can be imposed on bi-state and interstate entities when: (1) the creator states' legislatures have not made the laws or policies expressly applicable to the entities; and (2) neither Congress nor the creator states' legislatures have manifested any intent to apply them to the entities. The resulting confusion and potential inconsistency of state court determinations will continue until this Court definitively resolves them.

In stark contrast to the decision of the New Jersey Supreme Court, Pennsylvania applies a greater level of scrutiny when evaluating whether bi-state consent exists for applying a state law to the DRPA. For example, in *Nardi v. Delaware River Port Authority*, the Commonwealth Court, the highest Pennsylvania state appellate court to have considered this issue, held that state statutes that are both premised on the same public policy and that are both made specifically applicable to the DRPA — but which contain a *minor difference in language* — are not substantially similar and *cannot* be imposed on a bi-state compact entity like the DRPA because "[t]he Pennsylvania legislature has demonstrated that it *does not concur*" with the New Jersey legislature. *Nardi*, 88 Pa. Commw. at 564, 490 A.2d at 952 (emphasis added). In *Nardi*, a DRPA police officer sued the DRPA for supplementary disability benefits under Pennsylvania law. Although both the Pennsylvania law and its New Jersey counterpart were designed for a *"similar purpose," i.e.*, providing disability benefits to the DRPA's police officers, the Commonwealth Court ruled that *neither* state's statute applied to the DRPA because New Jersey and Pennsylvania's legislatures failed to enact *substantially similar laws.*[7]

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[7]The Pennsylvania law required that the DRPA *"shall"* provide disability benefits to its police officers:

> [A]ny member of the Delaware River Port Authority Police . . . who is injured in the performance of his duties . . . and by reason thereof is

Acknowledging the DRPA's status as a bi-state entity, the Pennsylvania Commonwealth Court stated that *"neither creator state can unilaterally impose additional duties, powers or responsibilities upon the Authority." Id.* (emphasis added). It held that the difference between the word *"shall,"* contained in the Pennsylvania law, and the word *"may,"* contained in the corollary New Jersey law, was substantial enough to prevent the court from imposing the Pennsylvania law on the DRPA. *Id.* at 564, 490 A.2d at 951. The court reasoned that the Pennsylvania law was "a unilateral legislative act *imposing* an additional burden on the Authority," because it would compel the payment of benefits which had never been mentioned in the DRPA's enabling Compact, while the New Jersey law "was a unilateral legislative act *restricting* a power already possessed by the Authority." *Id.* at 565, 490 A.2d at 952 (emphasis added).

In so ruling, Pennsylvania properly adhered to the exacting level of scrutiny that must be met before one compact state may permissibly impose its laws on a bi-state entity such as the DRPA.

> temporarily incapacitated from performing his duties, *shall* be paid . . . by the Delaware River Port Authority . . . his full rate of salary . . . until the disability arising therefrom has ceased.

Nardi, 88 Pa. Commw. at 561, 490 A.2d at 950 (citing 53 Pa. Cons. Stat. § 637(a)) (emphasis added). By contrast, the New Jersey law merely provided that the DRPA *"may"* provide such benefits at its discretion:

> Whenever any employee of the Delaware River Port Authority is absent from his post of duty as a result of a personal injury caused by an accident arising out of and in the course of his employment, the port authority *may* pay to such employee his full salary or wages for the period of such absence up to 1 calendar year without having such absence charged to the annual sick leave or the accumulated sick leave to which such employee may also be entitled as a employee of the port authority.

Id. at 562, 490 A.2d at 951 (citing N.J. Stat. Ann. § 32:3A-1) (emphasis in original).

Although the Pennsylvania and New Jersey statutes dealt with the same subject matter and were similar in nature, in recognizing the potential desirability of paying disability benefits, the Pennsylvania court deemed their difference of dispositive importance and refused to impose a requirement on the DRPA to provide disability benefits.

Under Pennsylvania law, even express statements in both states' statutes are an insufficient basis by which the DRPA's Compact may be supplemented where the two states' statutes are not identical.

This Court should grant review in order to resolve the conflict between New Jersey, Pennsylvania and all other states that have jointly created bi-state and interstate entities to determine when, if ever, a compact state can unilaterally impose its laws or policies on those entities.

B. The Difference Between The Standard of Scrutiny Applied by Pennsylvania and New Jersey Is Outcome-Determinative and Exposes Bi-State and Interstate Compact Entities to the Application of Conflicting Laws.

If the New Jersey Supreme Court had analyzed the substantial similarity of New Jersey and Delaware's labor policies utilizing the same standard of scrutiny as applied by the Pennsylvania Commonwealth Court in *Nardi*, the New Jersey Supreme Court would have reached the opposite conclusion. Nowhere in the DRBA's Compact, or in New Jersey or Delaware's labor laws, is there any mention of subjecting the DRBA to the *"policies"* underlying New Jersey's labor laws. *See generally* Del. Code Ann. tit. 17, § 1701 *et seq.;* N.J. Stat. Ann. § 32:11E-1 *et seq.* Rather, the DRBA's Compact expressly provides that the *DRBA* shall have the right to set policies regarding its operations, including labor relations policies. Del. Code Ann. tit. 17, § 1701, Art. VII(e); N.J. Stat. Ann. § 32:11E-1, Art. VII(e).[8]

By unilaterally subjecting the DRBA to labor policies, the New Jersey Supreme Court is regulating a bi-state entity through a means that *has never been recognized* by any other state that is a party to a bi-state compact. Indeed, the New Jersey Supreme Court's actions can be interpreted as having created a conflict between the standard

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[8]Article VII(e) of the DRBA's Compact specifically provides that the DRBA has the power to "appoint, or employ, such other officers, agents, attorneys, engineers and employees as it may require for the performance of its duties *and to fix and determine* their qualifications, duties, *compensation*, pensions, terms of office *and all other conditions and terms of employment and retention.*"

for imposing a single state's laws or policies on a bi-state compact entity in New Jersey — by the mere existence of "similar laws" or policies in the two creator states — and the standard for doing so in other states — by express authorization of both creator states' legislatures via enactment of almost identical or substantially similar *laws* which expressly contemplate that the two states' laws will be applied to the particular bi-state entity. *See, e.g., Delaware River Port Auth. v. Comm. of Pennsylvania*, 137 Pa. Commw. 170, 585 A.2d 587 (1991) ("joint legislation by the two creator states" required); *Malverty v. Waterfront Comm'n of New York*, 71 N.Y.2d 977, 524 N.E.2d 421, 529 N.Y.S.2d 67 (1988) ("express statement of intent" required); *Delaware River & Bay Auth. v. Carello*, 43 Del. Ch. 213, 222 A.2d 794 (1966) ("concurrent legislative action" required).

For example, New Jersey courts may unilaterally decide to hold the DRPA subject to a New Jersey law based on the reasoning articulated below by the New Jersey Supreme Court, while, based on *Nardi*, Pennsylvania courts may decide that New Jersey and Pennsylvania's laws are not sufficiently "substantially similar" and that imposition of such laws would result in an impermissible, unilateral act. Precedent further suggests that Pennsylvania courts would reject the application of mere state "*policy*" on the DRPA where the more specific statutes that express such policy are deemed inapplicable. *Nardi*, 88 Pa. Commw. 558, 490 A.2d 949 (1985); *accord Malverty*, 71 N.Y.2d 977, 524 N.E.2d 421, 529 N.Y.S.2d 67 (1988).

This Court should grant review in order to restore uniformity in the framework of laws applicable to bi-state and interstate compact entities.

III. THE NEW JERSEY SUPREME COURT'S DECISION VIOLATES THE COMPACT CLAUSE OF THE UNITED STATES CONSTITUTION AND THE TERMS OF THE DRBA'S COMPACT.

The Compact Clause of the United States Constitution expressly prohibits two States from entering into an agreement without first securing the consent of the United States Congress. U.S. Const. art.

I, § 10, cl. 3. In interpreting the Compact Clause, this Court has held that once Congressional consent has been given, "unless the compact to which Congress has consented is somehow unconstitutional, *no court may order relief inconsistent with its express terms.*" *Texas v. New Mexico*, 462 U.S. 554, 564 (1983) (citing *Cuyler v. Adams*, 449 U.S. 433, 438 (1981)) (emphasis added).

The New Jersey Supreme Court, the highest court in New Jersey and a component part of its State government, N.J. Const. art. III, § 1,[9] has applied New Jersey's labor policies to the DRBA and has ordered it to engage in collective bargaining negotiations with Respondent International Union of Operating Engineers, Local 68 ("IUOE"). By that order, New Jersey has impaired the DRBA's express rights guaranteed by its Compact to direct its labor relations and has violated the Compact Clause of the United States Constitution by unilaterally — and impermissibly — imposing its sovereign will and authority on the DRBA. *See Port Authority Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 314-16 (1990) (Brennan, J., concurring).

The decision may have the identical effect on the DRPA. Like Article XI of the DRBA's Compact, Article IX of the DRPA's Compact provides that neither the Commonwealth of Pennsylvania nor the State of New Jersey will *"diminish or impair the power of the [DRPA] to own, operate or control said properties and facilities . . . ."* *Compare* Del. Code Ann. tit. 17, § 1701, Art. XI; N.J. Stat. Ann. § 32:11E-1, Art. XI (DRBA Compact) *with* N.J. Stat. Ann. § 32:3-10; Pa. Stat. Ann. tit. 36, § 3503 (DRPA Compact) (emphasis added). One of the specific DRPA Compact powers is that "[t]o appoint, hire, or employ counsel and such other officers and such agents and employees as it may require for the performance of its duties, by contract of otherwise, and fix and determine their qualifications, duties and compensation." N.J. Stat. Ann. § 32:3-5(e); Pa. Stat. Ann. tit. 36, § 3503, Art IV(e). If the New Jersey Supreme Court's decision

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[9] *Accord Shelley v. Kraemer*, 334 U.S. 1, 14 (1948) ("A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way.").

below is precedent for interpretations of the DRPA's Compact and dictates the manner in which the DRPA may "operate or control" its property and facilities, the New Jersey Supreme Court will have impermissibly abrogated New Jersey's agreement with Pennsylvania and "diminish[ed] and impair[ed]" the DRPA's powers. It is a certain proposition that neither courts nor administrative agencies may erode the integrity of bi-state or interstate compact entities.[10]

Moreover, the New Jersey Supreme Court's decision also improperly interferes with the duties and rights of the Commissioners of all New Jersey-created bi-state entities to have "charge" over those entities' "property and affairs." *See, e.g.*, N.J. Stat. Ann. § 32:3-4; Pa. Stat. Ann., tit. 36, § 3503, Art. III (the DRPA's sixteen (16) Commissioners, eight (8) each from New Jersey and Pennsylvania, "shall have charge of the [DRPA's] property and affairs"); *accord* Del. Code Ann. tit. 17, § 1701, Art. VI; N.J. Stat. Ann. § 32:11E-1, Art. VI (DRBA Compact). Further, the decision interferes with the power and right of the Commissioners of New Jersey's bi-state entities to determine the proper fiscal direction of those entities and the appropriate terms and conditions of employment for their employees, neither of which can be infringed absent express authorization by the legislatures of *both* compact states. Accordingly, a New Jersey court's application of New Jersey's labor policies to the DRPA would be inconsistent with and would be an express violation of the Compact Clause and the DRPA's Congressionally-approved Compact.

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[10]Indeed, the United States District Court for the District of New Jersey recently ruled that neither the National Labor Relations Act nor the Labor-Management Relations Act apply to the DRPA and, thus, that the National Labor Relations Board lacks jurisdiction over the DRPA. *Stinson v. Delaware River Port Auth.*, 935 F. Supp. 531 (D.N.J. 1996). Further, the New Jersey Public Employment Relations Commission and the Pennsylvania Labor Relations Board have themselves ruled that they lack jurisdiction over the DRPA because it is a bi-state entity. *Delaware River Port Auth.*, 22 New Jersey Pub. Empl. Rep. ¶ 27083 (1996); *Pennsylvania Labor Rel. Bd. v. Delaware River Port Auth.*, 13 Pa. Pub. Empl. Rep. ¶ 13072 (1982).

This Court should grant review in order to restrain New Jersey from unilaterally imposing its "policies" on bi-state and interstate compact entities when express authorization from the other creator states' legislatures is entirely lacking.

IV. THE NEW JERSEY SUPREME COURT'S DECISION VIOLATES THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION.

The Supremacy Clause of the United States Constitution provides:

> This Constitution, and *the Laws of the United States which shall be made in Pursuance thereof;* and all Treaties made, or which shall be made, under the Authority of the United States, *shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby,* any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

In the Fraternal Order of Police, Penn-Jersey Lodge 30's ("FOP") case currently pending against the DRPA in New Jersey Superior Court, *Fraternal Order of Police, Penn-Jersey Lodge 30 v. Delaware River Port Authority,* Docket No. L-7547-96 (N.J. Super. Ct., Law Div.), the FOP is asking New Jersey, through its court system, unilaterally to impose interest arbitration as a terminal procedure in resolving bargaining disputes — *even though neither compact state's legislature expressly authorized imposing such rules or policies on the DRPA.*

Although the DRPA *voluntarily* recognized the FOP as a representative of certain of its police employees, the DRPA did not recognize the FOP because it was ordered to do so. The DRPA's recognition of the FOP has always been and, subject to any applicable law to the contrary, will continue to be within the sole discretion of its Board of Commissioners, acting within Articles IV and IX of the DRPA's enabling Compact.

Should the New Jersey courts order binding arbitration in the FOP's case against the DRPA, such action will violate federal law and the Compact Clause of the United States Constitution. New Jersey and its court system are not free to rewrite federal law to restrict a bi-state entity's right to make its own decisions regarding its labor relations, where such right was specifically *created* by federal law. *See Texas v. New Mexico,* 462 U.S. 554 (1982).

U.S. Const. art. VI, cl. 2 (emphasis added).

Both the DRBA and the DRPA's Compacts were approved by Congress pursuant to the Compact Clause of the United States Constitution. U.S. Const. art I, § 10, cl. 3. Accordingly, they are each a "Law of the Union." *Delaware River Joint Toll Bridge Comm'n v. Colbrun*, 310 U.S. 419, 427 (1940). As such, their interpretation is a question of federal law. *Cuyler v. Adams*, 449 U.S. 433, 438 n.7 (1981). Interstate compacts are thus "supreme Law of the Land" within the meaning of the Supremacy Clause of the Constitution of the United States.

The New Jersey Supreme Court is constitutionally obliged to honor the terms of its Congressionally-approved compacts. It did not and, therefore, violated the Supremacy Clause.

This Court should grant review to consider whether the New Jersey Supreme Court's decision violates the Supremacy Clause.

V. THE NEW JERSEY SUPREME COURT'S DECISION VIOLATES THE DOCTRINE OF SEPARATION OF POWERS.

Nowhere in the DRBA's Compact, the DRPA's Compact, or the compacts of any other New Jersey co-created bi-state entity is there authority for New Jersey courts unilaterally to impose labor policies on those entities. If the New Jersey legislature wished to enact a policy affecting the labor relations of its compact entities, it could have done so by enacting a *law*, provided that it secured the consent of the other creator states, *e.g.*, Delaware, Pennsylvania, New York. It has not in this case.[11] Securing the consent of both creator states' legislatures is the *only* approved method of imposing additional duties or obligations on a bi-state entity. *See, e.g.*, N.J. Stat. Ann. §

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[11]New Jersey has obtained the consent of other creator states' legislatures in other instances. For example, New Jersey and Pennsylvania, with the approval of Congress, amended the DRPA's Compact to permit the DRPA to take action to unify the ports of the Delaware River. N.J. Stat. Ann. §32:3-2(m); Pa. Stat. Ann. § 3503, Art. I(m) (1991); *see also* note 12, *infra*.

32:3-5; Pa. Stat. Ann. tit. 36, § 3503, Art. IV (DRPA Compact provides that the DRPA "shall also have such additional powers as may hereafter be delegated to or imposed upon it from time to time by the action of either state concurred in by legislation of the other.").[12] The New Jersey Supreme Court's radical misinterpretation amounts to a unilateral amendment of the Compact by judicial fiat, in contravention of the agreed legislative process.

The DRPA's Compact expresses the policy decisions made by the legislatures of both New Jersey and Pennsylvania. *See generally* N.J. Stat. Ann. § 32:3-2 *et seq.*; Pa. Stat. Ann. tit. 36, § 3503 *et seq.* The New Jersey Supreme Court itself has recognized that "policy matters are the exclusive responsibility of the legislative branch of government." *Vornado, Inc. v. Hyland*, 77 N.J. 347, 355, 390 A.2d 606, 610 (1978) (citing *Two Guys from Harrison, Inc. v. Furman*, 32 N.J. 199, 229 160 A.2d 265, 281 (1960)). Whether New Jersey's, or for that matter any state's, labor policies may be imposed on bi-state entities such as the DRBA and the DRPA is solely within the policy-making domain of the state legislatures of New Jersey and Delaware, or New Jersey and Pennsylvania, acting in concert with the approval of Congress — *not* the courts of New Jersey acting alone. *Hess v. Port Authority Trans-Hudson*, 513 U.S. 30 (1994). Any policy decisions that have not been expressly agreed to by the creator states' legislatures cannot be imposed on the entity.

The New Jersey Supreme Court's imposition of New Jersey's labor policies on the DRBA — and, by extension, on its other bi-state and interstate compact entities — amounts to an improper interference with the rights of the other creator states. *Hess*, 513 U.S. at 47. Its ruling directly contravenes the policy decision of the creator states' legislatures *not* to bind their bi-state and interstate entities to *either* state's labor laws or policies.

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[12]For example, in 1986, New Jersey's legislature enacted laws enlarging the scope of the police powers of the DRPA's police force. N.J. Stat. Ann. § 32:4-6 *et seq.* Their scope did not change, however, until 1994, when Pennsylvania's legislature enacted substantially similar laws. Pa. Stat. Ann. tit. 36, §§ 3504.1, 3504.1a.

This Court should grant review to reinforce the separation of powers between the state courts and their respective legislatures, a fundamental constitutional feature of the governments of New Jersey, Delaware, Pennsylvania, New York, and every other state that is a party to a bi-state or interstate compact, and which is an implicit but essential part of the DRBA and DRPA's Compacts.

CONCLUSION

The petition should be granted.

Respectfully submitted,

William H. Roberts*
Peter A. Gold
Jennifer J. Platzkere
BLANK ROME COMISKY & McCAULEY
210 Lake Drive East, Suite 200
Woodland Falls Corporate Park
Cherry Hill, New Jersey 08002
(609) 779-3600

1200 Four Penn Center Plaza
Philadelphia, Pennsylvania
19103-2599
(215) 569-5500

after September 1, 1997:
One Logan Square
Philadelphia, Pennsylvania
19103-6998

Counsel for *amicus curiae*
Delaware River Port Authority

Of counsel:

Richard L. Brown
John A. Zagorski
DELAWARE RIVER PORT AUTHORITY
One Port Center
2 Riverside Drive
P.O. Box 1949
Camden, New Jersey
08101-1949
(609) 968-2407
*Counsel of Record

APPENDICES

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

APPENDIX A

INDEX TO STATES
Compact Titles. State Administrators. Interstate Agencies
♦ Indicates compacts which have been proposed or enacted after 1983.

ALABAMA

Agreement on Detainers
Commissioner, Department of Corrections

Agreement on Qualification of Educational Personnel
State Superintendent of Education

Ameraport Deep Draft Harbor and Terminal Compact
Ameraport Offshore Harbor and Terminal Commission
Creates commission to establish an offshore terminal for receiving oil from deep draft supertankers. Apparently, the terminal was never built. Commission is defunct. -- dormant or defunct

Compact for Education
Education Commission of the States

Compact on Mental Health
State Mental Health Office

Driver License Compact
Director of Public Safety

Gulf States Marine Fisheries Compact
Gulf States Marine Fisheries Commission

Historic Chattahoochee Compact
Historic Chattahoochee Commission

Interstate Adoption Assistance Compact
Department of Human Resources

Interstate Compact for Supervision of Parolees and Probationers
Department of Corrections

Interstate Compact on Juveniles (Interstate Compact on Juveniles & Rendition Amendment)
Director of Youth Services

Interstate Compact on Placement of Children
Director of Youth Services

Interstate Corrections Compact
Commissioner, Department of Corrections

Interstate Library Compact
Director of Alabama Public Library Service

Multistate Tax Compact
Multistate Tax Commission

Mutual Interstate Aid Agreements and Compacts
Emergency Management Agency

Northeast Mississippi--Northwest Alabama Railroad Authority Compact
Northeast Mississippi--Northwest Alabama Railroad Authority

Rapid Rail Transit Compact (Southern)
Southern Rapid Rail Transit Commission

Southeastern Forest Fire Protection Compact
Southeastern States Forest Fire Compact Commission

Southeastern Interstate Low-Level Radioactive Waste Management Compact
Southeastern Low-Level Radioactive Waste Management Commission

Southern Growth Policies Compact
Southern Growth Policies Board

Southern Interstate Energy Compact (Southern States Energy Compact)
Southern States Energy Board

Southern Interstate Nuclear Compact
Southern Interstate Nuclear Board - Act No. 80-702 Section 2 provided that Sections 9-18-2 through 9-18-6, Code of Alabama 1975, would be repealed at such time as nine of the party states to the *Southern Interstate Nuclear Compact* approve substantially the same changes proposed in Act No. 80-702. At this time the condition making the 1980 Act effective have not occurred.

Southern Regional Education Compact
Southern Regional Education Board

Tombigbee-Tennessee Waterway Development Compact
Tombigbee-Tennessee Waterway Development Authority

Other agencies/officials authorized to enter interstate compacts or agreements.

Authority to Make Interstate Educational Agreements -
Code of Ala. 1975 § 16-3-34 -- 1979
The Alabama Commission on Higher Education can enter interstate compacts or agreements to promote higher education.

Milage Tax Reciprocal Agreements with Other States -
Code of Ala. 1975 § 40-19-11 -- 1939
Department of Revenue

ALASKA

Compact for Education
Education Commission of the States - Commission in Alaska is not funded. Legislation must be passed in order to terminate membership with the ECS program. This was never done, so the commission has been inactive in Alaska since 9/20/90

Driver License Compact
Commissioner, Department of Public Safety

Interstate Agreement on Qualification of Educational Personnel
Commissioner, Department of Education

Interstate Civil Defense and Disaster Compact
Emergency Services Division

Interstate Compact for the Supervision of Parolees and Probationers
Deputy Interstate Compact Administrator, Parole Board
Department of Corrections

Interstate Compact on Juveniles (Uniform Interstate Compact on Juveniles)
Social Services Program Officer, Division of Family & Youth Services

Interstate Compact on Mental Health
Commissioner, Department of Health and Social Services

Interstate Compact on the Placement of Children
Director, Division of Family & Youth Services, Department of Health and Social Services
Interstate Corrections Compact
Commissioner, Department of Corrections
Interstate Oil and Gas Compact
Interstate Oil and Gas Compact Commission
Multistate Tax Compact
Multistate Tax Commission
National Guard Mutual Assistance Compact
Department of Military and Veterans Affairs (upon request from governor)
Northwest Interstate Compact on Low-Level Radioactive Waste Management
Northwest Low-Level Radioactive Waste Compact Committee
Pacific Marine Fisheries Compact
Pacific Marine Fisheries Commission
Western Interstate Corrections Compact
Commissioner, Department of Corrections
Western Interstate Nuclear Compact
Western Interstate Energy Board As of 1994, Alaska does not have a member serving on the board
Western Regional Higher Education Compact
Western Interstate Commission for Higher Education

Other agencies/officials authorized to enter interstate compacts or agreements.
Hazardous Substance Release Control - AS §§ 46.09.050 -- 1986
Commissioner, Department of Environmental Conservation - Authorizes the governor to enter into agreements compacts with other states or countries to control the release of hazardous substances. Refers to the commissioner, department of environmental conservation in carrying out the requirements of the chapter. As of 1994, Alaska has not joined such a compact.
Oil Pollution Control - AS §§ 46.04.100 -- 1980
Authorizes the governor to execute agreements compacts with other states to control oil pollution. Also refers to the commissioner, department of conservation in carrying out the requirements of this chapter.

ARIZONA

Agreement on Detainers
Administrator, Interstate Compact Services, Department of Corrections
Arizona-California Boundary Compact
Arizona-Nevada Boundary Compact
Colorado River Compact
Compact for Education
Education Commission of the States
Driver License Compact
Assistant Director, Motor Vehicle Division, Department of Transportation
•Interstate Adoption Assistance Compact
ICPC Coordinator, Department of Economic Security, Administration for Children, Youth, and Families
•Interstate Compact for Jurisdiction on the Colorado River
County Sheriffs, Municipal Police
Interstate Compact for the Supervision of Parolees and Probationers
Administrator, Interstate Compact Services, Department of Corrections
Interstate Compact on Juveniles
Director, Department of Youth Treatment and Rehabilitation
Interstate Compact on Placement of Children
Director, Department of Economic Security
Interstate Corrections Compact
Director, Department of Corrections
Interstate Compact to Conserve Oil and Gas (Interstate Oil Compact)
Interstate Oil and Gas Compact Commission
Multistate Highway Transportation Agreement
Assistant Director, Motor Vehicle Division, Department of Transportation
•National Guard Mutual Assistance Counter-Drug Activities Compact
Adjutant General
Nonresident Violator Compact (Traffic)
Arizona Department of Transportation
•Southwestern Low-Level Radioactive Waste Disposal Compact
Southwestern Low-Level Radioactive Waste Compact Commission
Uniform Child Custody Jurisdiction Act
Director, Department of Youth Treatment and Rehabilitation
Uniform Unclaimed Property Act
Department of Revenue
Upper Colorado River Basin Compact
Upper Colorado River Commission
Vehicle Equipment Safety Compact
American Association of Motor Vehicle Administrators
Western Interstate Corrections Compact
Manager, Special Services, Department of Corrections
Western Interstate Nuclear Compact
Western Interstate Energy Board
Western Regional Education Compact
Western Interstate Commission for Higher Education
•Wildlife Violator Compact
Arizona Game and Fish Department

Other agencies/officials authorized to enter interstate compacts or agreements.
Factory Built Buildings - A.R.S. § 41-2153
Assistant Director, Manufactured Housing Office, Department of Building and Fire Safety - Empowers the assistant director of the office of

manufactured housing to enter into interstate compacts regarding construction standards for manufactured housing.

Other intergovernmental compacts or agreements
Indian Gaming Regulatory Act Compacts - A.R.S. § 5-601 – 1992
Governor

ARKANSAS
Arkansas River Basin Compact of 1970
Arkansas-Oklahoma River Compact Commission
Arkansas-Mississippi Great River Bridge Construction Compact
State Highway Commission
Bi-State Criminal Justice Center Compact
Director, Bi-State Information Center
Central Interstate Low-Level Radioactive Waste Compact
Central Interstate Low-Level Radioactive Waste Commission
Compact for Education
Education Commission of the States
Compact on Mental Health
Director, Arkansas State Hospital
Driver License Compact
Office of Driver Services, Department of Finance and Administration
Interstate Agreement on Detainers
Director, Department of Corrections
Interstate Civil Defense and Disaster Compact
Office of Emergency Services
Interstate Compact on Adoption and Medical Assistance
Deputy Administrator, Interstate Compacts Unit, Department of Human Services
Interstate Compact on Juveniles
Deputy Administrator, Interstate Compacts Unit, Department of Human Services
Interstate Compact on the Placement of Children
Deputy Administrator, Interstate Compacts Unit, Department of Human Services
Interstate Compact to Conserve Oil and Gas
Interstate Oil and Gas Compact Commission
Interstate Corrections Compact
Director, Department of Corrections
Interstate Environmental Compact
– dormant or defunct
Interstate Library Compact
State Librarian
Multistate Tax Compact
Multistate Tax Commission
Nonresident Violator Compact
American Association of Motor Vehicle Administrators
Red River Compact
Red River Compact Commission
South Central Interstate Corrections Compact
Director, Department of Corrections

– dormant or defunct
South Central Interstate Forest Fire Protection Compact
South Central Interstate Forest Fire Protection Compact Commission
Southern Growth Policies Agreement
Southern Growth Policies Board
Southern Interstate Energy Compact (Southern States Energy Compact)
Southern States Energy Board
Southern Regional Education Compact
Southern Regional Education Board
U.S. Highway 82 Four Lane Construction Compact
U.S. Highway 82 Four Lane Construction Authority and the Arkansas State Highway Commission - Creates an authority to "promote and ensure the four-laning of U.S. Highway 82 within the party states" of Alabama, Arkansas, Mississippi and Texas. Although legislation was passed in at least two of these states, as of 1994, the authority had either not been created or ceased functioning. Congressional consent was required, but it is unclear whether this occurred.
– dormant or defunct
Uniform Act for Out-of-State Parolee Supervision
Compacts Administrator, Parole Division, Department of Corrections
Vehicle Equipment Safety Compact
American Association of Motor Vehicle Administrators

Other agencies/officials authorized to enter interstate compacts or agreements.
Electronic Product Control (Radiation Protection) - ARK. CODE ANN. § 20-21-311
Electronic Product Control Agency - Authorizes the Electronic Product Control Agency to enter contracts with other states to inspect or perform other functions relative to controlling radiation from electronic products. Agencies officials authorized to enter interstate compacts or agreements.
Flood Control - ARK. CODE ANN. § 15-24-106
Soil and Water Commission - Authorizes the Soil and Water Conservation Commission to enter into compacts with other states concerning flood control.
Fresh Pursuit - ARK. CODE ANN. §§ 16-81-401 to 16-81-407
Authorizes state military forces from other states to pursue and capture insurrectionists, saboteurs, enemies or enemy forces into Arkansas, providing that such people are surrendered to Arkansas authorities upon capture.

CALIFORNIA

Agreement on Detainers (Interstate)
IAD Administrator, Department of Corrections
Agreement on Qualification of Educational Personnel
Superintendent of Public Instruction
California-Nevada Interstate Compact
California-Nevada Compact Commission - Congress never ratified the compact. The California statute is still in force, but the commission has been abolished. – dormant or defunct
Colorado River Boundary Compact
Colorado River Crime Enforcement Compact
Police and courts in cities bordering Colorado River
Compact for Education
Education Commission of the States
Driver License Compact
Director, Department of Motor Vehicles
Interstate Civil Defense and Disaster Compact
Director, Office of Emergency Services
Interstate Compact on Juveniles
Deputy Compact Administrator, Department of Youth Authority
Interstate Compact on Placement of Children
Deputy Director, Family and Children's Services Branch, Department of Social Services
Interstate Compact to Conserve Oil and Gas
Interstate Oil and Gas Compact Commission
Interstate Corrections Compact
Corrections Compact Coordinator, Department of Corrections
Klamath River Basin Compact
Klamath River Compact Commission
Multistate Highway Transportation Agreement
California has not had an administrator for 3 years. Formerly, the Department of Transportation
Multistate Tax Compact
Multistate Tax Commission
Oregon-California Goose Lake Interstate Compact
– dormant or defunct
Pacific Marine Fisheries Compact
Pacific Marine Fisheries Commission
Pest Control Compact
Secretary of Food and Agriculture
Southwestern Low-Level Radioactive Waste Disposal Compact
Southwestern Low-Level Radioactive Waste Compact Commission
Tahoe Regional Planning Compact
Tahoe Regional Planning Agency
Uniform Act for Out-of-State Probationer or Parolee Supervision
Deputy Compact Administrator, (Parolee), Department of Corrections
Deputy Compact Administrator (Probation), Department of Youth Authority
Western Interstate Corrections Compact
WICC Compact Coordinator, Department of Corrections
Western Interstate Nuclear Compact
Western Interstate Nuclear Board
Western Regional Education Compact
Western Interstate Commission for Higher Education

Other agencies/officials authorized to enter interstate compacts or agreements.

California-Arizona Compact - California West's Ann.Cal.Fish & Game Code § 375, 7180 to 7186, inclusive [1977]
Inland Fisheries Division, Department of Fish and Game - Authorizes using a special stamp on fishing licenses to permit reciprocal fishing rights within the California and Arizona jurisdictions on the Colorado River and adjacent waters.
Interstate Compact Regarding Marine Oil - West's Ann.Cal.Gov.Code § 8670.9
Administrator for Oil Spill Response - Directs the administrator for oil spill response to enter discussions with other states for the purpose of developing an interstate compact regarding oil transport by tanker or barge.
Nevada Compact - West's Ann.Cal.Gov.Code §§ 8100 et seq. – 1943
Not a compact, but a statutory requirement that the governor enter into a certain compact or agreement with Nevada, subject to approval of the California Legislature. No further information is available as to the subsequent actions of either party.
Sections 7056 (a) (3) and 19551 of the CA Rev. & Tax C. authorize the Franchise Tax Board and State Board of Equalization enter agreements with other states to share income, sales and use tax information.
Western States Organized Crime Compact - California West's Ann.Cal.Gov.Code §§ 15050, 15051 – 1971
This statute authorized the state to consider such compacts.

Other intergovernmental compacts or agreements.

State-Tribal Agreements Governing Indian Fishing - West's Ann.Cal.Fish & G. Code §§ 16000 and 16500 et seq. – 1986
Authorizes the Department of Fish and Game to enter an agreement or compact with the Covelo Indian Community regarding fishing in the boundary streams of the Round Valley Indian Reservation. Authorizes the director of fish and game to enter into an agreement or compact with the Yurok Tribe regarding fishing on the Klamath and Trinity Rivers.

COLORADO

Agreement on Detainers (Interstate)
Executive Director, Department of Corrections
Animas-La Plata Project Compact

ArLansas River Compact of 1949
Arkansas River Compact Administration
Colorado River Compact
Colorado River Compact Commissioner
•Compact for Adoption Assistance & Interstate Medical & Adoption Subsidy Payments
Colorado Department of Social Services
Compact with Kansas, New Mexico and Wyoming (for Crime Prevention)
Attorney General - The ratification and approval of this compact by Kansas was limited to sections 24-60-205 and 206 (L.37, pg.773). New Mexico renounced this compact in 1967 (see N.M. Laws of 1967, Chapter 201, § 3, pg. 1198).
– dormant or defunct
Costilla Creek Compact (Amended Costilla Creek Compact)
Costilla Creek Compact Commission
Cumbres and Toltec Scenic Railroad Compact
Cumbres and Toltec Scenic Railroad Commission
Driver License Compact
Director, Division of Motor Vehicles, Department of Revenue
Compact for Education (Interstate)
Education Commission of the States
Interstate Compact for the Supervision of Parolees and Probationers
Governor - Modified versions of the compact were adopted in 1957 and 1973
•Interstate Compact on Agricultural Grain Marketing
Interstate Agriculture Grain Marketing Commission
Interstate Compact on Juveniles
Executive Director, Department of Institutions
Interstate Compact on Mental Health
Executive Director, Department of Institutions
Interstate Compact on the Placement of Children
Executive Director, Department of Social Services, or designee
Interstate Compact to Conserve Oil and Natural Gas
Interstate Oil and Gas Compact Commission
Interstate Corrections Compact
Executive Director, Department of Corrections
Interstate Library Compact
Commissioner of Education
La Plata River Compact
La Plata River Compact Commission
Multistate Highway Transportation Agreement
Governor or person designated by a special committee of legislators
Multistate Tax Compact
Multistate Tax Commission
Nonresident Violator Compact
American Association of Motor Vehicle Administrators
Republican River Compact
Republican River Compact Commission
Rio Grande River Compact
Rio Grande Compact Commission
•Rocky Mountain Low-Level Radioactive Waste Compact
Rocky Mountain Low-Level Radioactive Waste Board
South Platte River Compact
South Platte River Compact Commission
Uniform Unclaimed Property Act
State Treasurer
Upper Colorado River Basin Compact
Upper Colorado River Basin Commission
Vehicle Equipment Safety Compact
American Association of Motor Vehicle Administrators
Western Interstate Corrections Compact
Executive Director, Department of Corrections
Western Interstate Nuclear Compact
Western Interstate Nuclear Board
Western Regional Education Compact
Western Interstate Commission for Higher Education
Wildlife Violator Compact
Board of Compact Administrators

Other intergovernmental compacts or agreements
Tribal-State Gaming Compact - C.R.S. §§ 12-47.2-101 to 12-47.2-103 – 1991
Governor - Indian tribes may ask the governor to negotiate for the purpose of entering into tribal-state compacts
Compact for Care of Felons - C.R.S. §§ 24-60-401 to 24-60-403 – 1951

CONNECTICUT

Agreement on Detainers
Interstate Compact Supervisor, Department of Corrections
Agreement on Qualification of Educational Personnel
Commissioner of Education
Atlantic States Marine Fisheries Compact
Atlantic States Marine Fisheries Commission
Bus Taxation Proration Agreement
Commissioner of Motor Vehicles
Compact for Education
Education Commission of the States
Compact on Mental Health
Administrator for Mentally Ill Adults, Administrator for Mentally Deficient,
Administrator for Mentally Ill Children and Youth, Department of Mental Health
Connecticut River Atlantic Salmon Compact
Connecticut River Atlantic River Commission
Connecticut River Valley Flood Control Compact
Connecticut River Valley Flood Control Commission
Connecticut-New York Railroad Passenger Transportation Compact
Connecticut Public Transportation Commission
Interstate Civil Defense and Disaster Compact
Director, Office of Emergency Management
Interstate Compact for Parole and Probation Supervision

Commissioner of Correction
Interstate Compact on Juveniles
Department of Children and Youth Services
Interstate Compact on Placement of Children
Commissioner, Department of Children and Youth Services
Interstate Compact on Welfare Services
Commissioner of Income Maintenance
– dormant or defunct
Interstate Corrections Compact
Commissioner of Correction
Interstate Library Compact
Connecticut State Librarian
Mid-Atlantic Air Pollution Compact
Mid-Atlantic States Air Pollution Control Commission
– dormant or defunct
Mutual Military Aid Compact
Governor, Adjutant General or other designee
New England Corrections Compact
Commissioner of Correction or Interstate Compact Supervisor, Department of Corrections
New England Higher Education Compact
New England Board of Higher Education
New England Interstate Planning Compact
New England Interstate Planning Commission
– dormant or defunct
New England Interstate Water Pollution Control Compact
New England Interstate Water Pollution Control Commission
New England Radiological Health Protection Compact
Commissioner of Environmental Protection, represented by the Director of Monitoring and Radiation
New England State Police Compact
Deputy Commissioner, State Police - The *New England State Police Compact* created the New England State Police Administrators Conference and the New England State Police Intelligence Network
♦*Northeast Interstate Low-Level Radioactive Waste Management Compact*
Northeast Interstate Low-Level Radioactive Waste Commission
Northeastern Interstate Forest Fire Protection Compact
Northeastern Forest Fire Protection Commission
Northeastern Water and Related Land Resources Compact
Northeastern Resources Commission
– dormant or defunct
Thames River Flood Control Compact
Thames River Valley Flood Control Commission
Tri-State Sanitation Compact (Interstate Environmental Commission Tri-State Compact)
Interstate Sanitation Commission

Other agencies/officials authorized to enter interstate compacts or agreements.
Electricity and Gas Transmission between Connecticut and other states - C.G.S.A. § 16-48 -- 1975
Department of Public Utility Control - Authorizes the Department of Utility Control to enter interstate compacts with New York, Vermont, Massachusetts, Rhode Island, New Jersey and Pennsylvania to jointly regulate electricity and gas transmission between these states.

DELAWARE
Agreement on Detainers (Uniform)
Commissioner of Corrections
Agreement on Qualification of Educational Personnel
Superintendent of Public Instruction
♦*Appalachian States Low-Level Radioactive Waste Compact*
Appalachian States Low-Level Radioactive Waste Commission
Atlantic States Marine Fisheries Compact
Atlantic States Marine Fisheries Commission
Compact for Education
Education Commission of the States
Delaware River and Bay Authority (Delaware-New Jersey Compact)
Delaware River and Bay Authority
Delaware River Basin Compact
Delaware River Basin Commission
Driver License Compact
Secretary, Department of Public Safety
Interstate Civil Defense and Disaster Compact
Governor
Interstate Compact on Juveniles
Secretary, Department of Services for Children, Youth and Their Families
Interstate Compact on Mental Health
Secretary, Department of Health and Human Services
Interstate Compact on Placement of Children
Compact Administrator, Department of Children, Youth and Their Families
Interstate Corrections Compact
Commissioner, Department of Corrections
Interstate Pest Control Compact
Mentally Disordered Offender Compact
Department of Health and Social Services
Middle Atlantic Forest Fire Protection Compact
Secretary, Department of Agriculture
Uniform Law for Out-of-State Parolee Supervision
Parole & Probation Bureau, Corrections Department

FLORIDA
Agreement on Detainers
Correctional Services Administrator, IAD Compact, Department of Corrections
Agreement on Qualification of Educational Personnel
Commissioner of Education
Atlantic States Marine Fisheries Compact
Atlantic States Marine Fisheries Commission
Compact for Education

Education Commission of the States
Driver License Compact
Driver Improvement Bureau. Department of Highway Safety and Motor Vehicles
Gulf States Marine Fisheries Compact
Gulf States Marine Fisheries Commission
Interstate Compact on Juveniles
ICJ Compact Administrator. Department of Juvenile Justice
Interstate Compact on Mental Health
Interstate Compact Coordinator. Department of Mental Health and Rehabilitative Services
Interstate Compact on Migrant Labor
Interstate Migrant Labor Commission
– dormant or defunct
Interstate Compact on Placement of Children
ICPC Compact Administrator. Department of Health and Rehabilitative Services
Interstate Corrections Compact
Bureau Chief of the Interstate Corrections Compact. Department of Corrections
(Interstate) Environment Control Compact
– dormant or defunct
Interstate Library Compact
Secretary of State
Interstate Compact to Conserve Oil and Gas
Interstate Oil and Gas Compact Commission
*Nonresident Violators Compact (of 19**)*
American Association of Motor Vehicle Administrators
♦*Southeast Interstate Low-Level Radioactive Waste Management Compact*
Southeast Interstate Low-Level Radioactive Waste Management Commission
Southeastern Forest Fire Protection Compact
Southeastern States Forest Fire Compact Commission
Southern Growth Policies Compact
Southern Growth Policies Board
Southern Interstate Energy Compact
Southern States Energy Board
Southern Regional Education Compact
Southern Regional Education Board
Uniform Law for Out-of-State Parollee Supervision
Chief-Interstate Compacts Bureau. Department of Corrections (transfers to Florida)
Administrator. Interstate Compacts Office. Parole Commission (transfers out of Florida)
Vehicle Equipment Safety Compact
American Association of Motor Vehicle Administrators

Other agencies/officials authorized to enter interstate compacts or agreements
Interstate Pension Portability Act - West's F.S.A. § 121.45 – 1990
Division of Retirement - Directs the Division of Retirement to survey other state retirement systems to determine the feasibility and interest in an interstate compact to increase the portability of pensions for public employees
Mutual Aid Arrangements - West's F.S.A. § 252.40 – 1974
Division of Emergency Management - Authorizes the governor to enter into compacts with other states if he finds that joint action with that state is desirable in meeting common intergovernmental problems of emergency management planning, prevention, mitigation, response and recovery.

Other intergovernmental agreements
Seminole Indian Tribe Water Rights Compact - West's F.S.A. § 285.165 – 1987

GEORGIA

Agreement on Detainers
Appointed by Commissioner of Corrections
Atlantic States Marine Fisheries Compact
Atlantic States Marine Fisheries Commission
Compact for Education
Education Commission of the States
Historic Chattahoochee Compact
Historic Chattahoochee Commission
Interstate Civil Defense and Disaster Compact
Georgia Emergency Management Agency
Interstate Compact on Juveniles
Runaway Investigations Unit. Department of Children and Youth Services – juvenile delinquents
Interstate Compact on Mental Health
Commissioner of Human Resources
Interstate Compact on the Placement of Children
Department of Family and Children's Services or Department of Children and Youth Services
Interstate Corrections Compact
Department of Corrections
Interstate Environment Compact
Commissioner of Natural Resources or their appointee
– dormant or defunct
Interstate Library Compact
Public Library Services Unit. Department of Education
Pest Control Compact
♦*Rapid Rail Transit Compact (Southern)*
Southern Rapid Rail Transit Commission
Southeast Interstate Low-Level Radioactive Waste Management Compact
Southeast Interstate Low-Level Radioactive Waste Management Commission
Southeastern Interstate Forest Fire Protection Compact
Southeastern States Forest Fire Protection Compact Commission. Director, State Forestry Commission
Southern Growth Policies Agreement
Southern Growth Policies Board
Southern Regional Education Compact
Southern Regional Education Board

Southern States Energy Compact
Southern States Energy Board
Uniform Act for Out-of-state Parole Supervision
Commissioner of Corrections

Other agencies/officials authorized to enter interstate compacts or agreements.
Surface-Water Management - O.C.G.A. § 12-5-24 – 1977
Director, Environmental Protection Division (EPD), Department of Natural Resources - Authorizes the director of EPD to enter interstate compacts or agreement concerning surface water management.

HAWAII
Agreement on Detainers
Lieutenant Governor
Compact for Education
Education Commission of the States
Driver License Compact
Director of Transportation
Interstate Agreement on Qualification of Educational Personnel
Superintendent of Education
Interstate Parole and Probation Compact
Adult Compact Administrator, Adult Probation Division, First Circuit Court
♦*Interstate Compact on Adoption and Medical Assistance (Adoption Assistance Compact and Procedures for Interstate Service Payments)*
Assistant Program Administrator, Department of Human Services, Family & Adult Services Division
Interstate Compact on Juveniles
Lieutenant governor
Interstate Compact on Mental Health
Director of Health
Interstate Compact on Placement of Children
Assistant Program Administrator, Department of Human Services, Family & Adult Services Division
Multistate Tax Compact
Multistate Tax Commission
Nonresident Violator Compact
American Association of Motor Vehicle Administrators, Hawaii Judiciary, Traffic Violations Bureau.
♦*Northwest Interstate Compact on Low-level Radioactive Waste Management*
Northwest Interstate Low-level Waste Compact Committee
Vehicle Equipment Safety Compact
American Association of Motor Vehicle Administrators
Western Interstate Corrections Compact
Director of Public Safety
Western Regional Education Compact
Western Interstate Commission for Higher Education

IDAHO
Bear River Compact
Bear River Commission
Columbia River Compact (Columbia Interstate Compact)
Department of Water Resources
– dormant or defunct
Driver License Compact
Motor Vehicle Bureau, Department of Transportation
Interstate Agreement on Detainers
Correctional Records Office, Department of Corrections
Interstate Compact for the Supervision of Parolees and Probationers
Interstate Compact Coordinator for Field and Community Services, Department of Corrections
Interstate Compact for Education
Education Commission of the States
Interstate Compact on Juveniles
Deputy Administrator, Division of Family and Community Services, Department of Health and Welfare
Interstate Compact on Mental Health
Assistant Administrator, Family and Community Services, Department of Health and Welfare
Interstate Compact on Qualification of Educational Personnel
Supervisor, Teacher Education and Certification, Department of Education
Interstate Compact on Placement of Children
Deputy Administrator, Division of Family and Community Services, Department of Health and Welfare
Interstate Corrections Compact
Coordinator, Corrections Compact, Department of Corrections
Interstate Library Compact
State Librarian
♦*Interstate Mutual Aid Compact*
Operations Office, Bureau of Disaster Services
Multistate Highway Transportation Agreement
No administrator - This is an agreement among the legislative bodies of the member states
Multistate Tax Compact
Multistate Tax Commission
Nonresident Violator Compact
Supervisor, Driver Records Unit, Driver Services, Department of Transportation
♦*Northwest Compact on Low-level Radioactive Waste Management*
Northwest Low-level Radioactive Waste Compact Committee
Pacific Marine Fisheries Compact
Pacific Marine Fisheries Commission
Pacific States Agreement on Radioactive Materials Transportation
Pacific States Radioactive Materials Transportation Committee

Salmon Falls Creek Compact
Water Allocation Bureau, Department of Water Resources - Although a member, Idaho is not active in this compact.
-- dormant or defunct
Snake River Compact
Water Allocation Bureau, Department of Water Resources
Western Interstate Nuclear Compact (Western Interstate Energy Compact)
Western Interstate Nuclear Board
Western Regional Education Compact (Interstate Compact for Western Regional Cooperation in Higher Education)
Western Interstate Commission for Higher Education
Wildlife Violator Compact
Wildlife Bureau, Department of Fish and Game

Other intergovernmental compacts or agreements
Pacific Northwest Economic Region - I.C. §§ 67-7801 to 67-7803
Pacific Northwest Economic Region Commission - Although technically not a compact or agreement, this legislation creates a regional council to promote economic development among the states and Canadian provinces in the Pacific Northwest. Alaska, Idaho, Montana, Oregon, Washington, Alberta and British Columbia are eligible to join. The legislation creating this organization was generally introduced in the early 1990s.

ILLINOIS

Agreement on Detainers
Interstate Compact Administrator, Department of Corrections
Bi-state Development Agency Compact
Bi-state Development Agency
•*Central Midwest Interstate Low-level Radioactive Waste Compact*
Central Midwest Compact Commission
Compact for Education
Education Commission of the States
Compact on Mental Health
Department of Mental Health and Developmental Disabilities
Compact on Mentally Disordered Offenders
Driver License Compact
Secretary of State, Drivers' Services Department
Great Lakes Basin Compact
Great Lakes Commission
High Speed Rail Compact (Interstate)
Illinois-Indiana Bridge Compact (Commissioners Act)
Illinois-Indiana Bridge Commission, IL Bureau Chief for Bridges and Structures, Department of Transportation
-- dormant or defunct

Illinois-Missouri Bridge Compact Act
Illinois-Missouri Bridge Commission, IL Bureau Chief for Bridges and Structures, Department of Transportation
-- dormant or defunct
Interstate Compact for Supervision of Parolees and Probationers
Interstate Compact Administrator for Adult Parole
Interstate Compact Administrator for Adult Probation
Interstate Compact on Juveniles
Parolees: Interstate Compact Administrator, IL Department of Corrections,
Probationers: Interstate Compact Administrator, Administrative Office of the Illinois Courts
Interstate Compact on the Placement of Children
Compact Administrator, Department of Children and Family Services
Interstate Corrections Compact
Department of Corrections
•*Interstate Disaster Compact*
Emergency Management Agency
Interstate High Speed Intercity Rail Passenger Network Compact
Interstate Rail Passenger Advisory Council, IL Bureau Chief of Railroads, Department of Transportation
Interstate Library Compact
Secretary of State
Interstate Mining Compact
Interstate Mining Commission
Interstate Oil and Gas Compact
Interstate Oil and Gas Compact Commission
Interstate Pest Control Compact
Department of Agriculture
•*Interstate Rail Passenger Network Compact*
Interstate Rail Passenger Advisory Council, IL Bureau Chief of Railroads, Department of Transportation
•*Midwestern Higher Education Compact*
Midwestern Higher Education Commission
Missouri-Illinois-Jefferson-Monroe Bridge Compact
Missouri-Illinois-Jefferson-Monroe Bridge Commission, Illinois Bureau Chief for Bridges and Structures
-- dormant or defunct
Nonresident Violator Compact
Secretary of State, Driver Services Department
Ohio River Valley Water Sanitation Compact
Ohio River Sanitation Commission
•*Tri-State High Speed Rail Compact*
Tri-State High Speed Rail Commission
Wabash Valley Compact
Wabash Valley Interstate Commission

Other agencies/officials authorized to enter interstate compacts or agreements.
Border State School Interstate Compact - Illinois 45 ILCS 95/0.01 et seq. -- 1955
State Superintendent of Education - Authorizes local

school districts to enter compacts with districts in bordering states to create joint school districts. There is only one instance where this happened, and that district no longer exists.
– dormant or defunct
Crime Prevention and Correction - Illinois. 730 ILCS 5/3-3-11.3 – 1973
Governor - Authorizes the governor to enter into agreements regarding same.
Sexually Dangerous Persons, Interstate Transfer - 45 ILCS 20/0.01 et seq. – 1963
Governor - Authorizes the governor to enter into reciprocal agreements with other states.

INDIANA

Compact for Education
Education Commission of the States
Driver License Compact
Commissioner, Bureau of Motor Vehicles
Great Lakes Basin Compact
Great Lakes Commission
Indiana-Kentucky Boundary Compact
Interstate Agreement on Qualification of Educational Personnel
Superintendent of Public Instruction
Interstate Compact for the Supervision of Parolees and Probationers
Parolees: Supervisor, Parole Services, Department of Corrections
Probationers: Compact Coordinator, Indiana Judicial Center
♦*Interstate Compact for Traffic Safety*
Director, Office of Traffic Safety
Interstate Compact on Adoption Assistance
Deputy Compact Administrator, Division of Family and Children
Interstate Compact on Juveniles
Parolees: Supervisor, Parole Services, Department of Corrections
Probationers: Probation Juvenile Director, Indiana Judicial Center
Interstate Compact on Mental Health
Interstate Compact Administrator, Criminal Justice Programs, Office of General Counsel, Division of Mental Health, Family and Social Services
Interstate Compact on the Placement of Children
Program Director, Licensing Unit, Division of Family and Children, Family and Social Services
Interstate Corrections Compact
Supervisor, Parole Services, Department of Correction
♦*Interstate Earthquake Emergency Compact*
Director of State Emergency Management Agency
Interstate Emergency Management and Disaster Compact
Director, State Emergency Management Agency
♦*Interstate High Speed Rail Passenger Compact*
Interstate Rail Passenger Advisory Council, Railroad Section Manager, Department of Transportation
Interstate Library Compact
Director, Indiana State Library
Interstate Mining Compact
Interstate Mining Commission
Interstate Oil and Gas Compact
Interstate Oil and Gas Commission
♦*Interstate Rail Passenger Network Compact*
Interstate Rail Passenger Advisory Council, Commissioner, IN Department of Transportation
♦*Midwest Interstate Low-Level Radioactive Waste Compact*
Midwest Interstate Low-Level Radioactive Waste Commission
Ohio River Valley Sanitation Compact
Ohio River Valley Water Sanitation Commission
Vehicle Equipment Safety Compact
American Association of Motor Vehicle Administrators

Other agencies/officials authorized to enter interstate compacts or agreements.

Interstate Compact for Traffic Safety - Indiana. IC 9-28-3-1 [1991]
This Indiana law adopts a compact which authorizes the governor and state traffic director to notify officials in other states that Indiana recognizes the need for uniform traffic safety regulations and standards. It urges all states to join an *Interstate Compact for Traffic Safety* that was authorized by Public Law 684 of the 85th Congress. The Indiana law establishes a bureau to enter and maintain reciprocal agreements with other states concerning motor vehicles, and particularly, the International Registration Plan.

IOWA

♦*Adoption of Persons*
Department of Human Services
Agreement on Detainers
Director, Department of Corrections
Compact on Mental Health
Director of Mental Health, Mental Retardation and Developmental Disabilities, Department of Human Services
Driver License Compact
Department of Transportation
Education Compact
Education Commission of the States
Interstate Civil Defense and Disaster Compact
Emergency Management Division, Department of Public Defense
Interstate Compact for the Supervision of Parolees and Probationers (Interstate Probation and Parolee Compact
Interstate Compact Bureau, Department of Corrections
♦*Interstate Compact on Agricultural Grain Marketing*
Interstate Agricultural Marketing Commission

♦*Interstate Compact on Energy (Midwest Energy Compact*
Interstate Midwest Energy Commission
Interstate Compact on Juveniles
Department of Human Services
Interstate Compact on Placement of Children
Department of Human Services
Interstate Corrections Compact
Division of Institutions, Department of Corrections
Interstate Library Compact
Division of Libraries/Information Services, Department of Education
♦*Midwest Interstate Low-Level Radioactive Waste Compact*
Midwest Interstate Low-Level Radioactive Waste Commission
Midwest Nuclear Compact
Appointed by Governor
-- dormant or defunct
Missouri River Interstate Barge Compact
Department of Transportation
-- dormant or defunct
Nonresident Violator Compact
American Association of Motor Vehicle Administrators
Qualification of Educational Personnel
Director, Department of Education
Unclaimed Property Compact
State Treasurer
Uniform Disposition of Unclaimed Property Act
State Treasurer
Upper Mississippi Riverway Compact
-- dormant or defunct
Vehicle Equipment Safety Act
American Association of Motor Vehicle Administrators

KANSAS

Agreement on Detainers
Director of Federal and State Affairs, Department of Corrections
Arkansas River Compact (of 1949)
Arkansas River Compact Administration
Arkansas River Compact (of 1965) (Arkansas River Basin Compact Kansas, Oklahoma)
Kansas-Oklahoma Arkansas River Commission
♦*Central Interstate Low-Level Radioactive Waste Compact*
Central Interstate Low-Level Radioactive Waste Commission
Compact for Education
Education Commission of the States
Driver License Compact
Director, Division of Vehicles, Department of Revenue
Interstate Civil Defense and Disaster Compact
Deputy Director, Division of Emergency Preparedness
Interstate Agreement on Qualification of Educational Personnel
Commissioner of Education
♦*Interstate Compact on Adoption and Medical Assistance*
Deputy Compact Administrator, Youth and Adult Services
♦*Interstate Compact on Agricultural Grain Marketing*
Interstate Agricultural Grain Marketing Commission
Interstate Compact on Juveniles
ICJ Specialist, Youth and Adult Services
Interstate Compact on Mental Health
Director of Institutions, Social and Rehabilitation Services Department
Interstate Compact on Placement of Children
ICPC Specialist, Youth and Adult Services
Interstate Compact on Placement of Children
Youth Services, Department of Social and Rehabilitation Services
Interstate Compact to Conserve Oil and Gas
Interstate Oil and Gas Compact Commission
Interstate Corrections Compact
Corrections Manager, Department of Corrections
♦*Interstate Dealer Licensing Compact*
Director, Division of Vehicles, Department of Revenue
Interstate Library Compact (Interlocal Cooperation Act)
State Librarian
Kansas City Area Transportation District & Authority Compact
Kansas City Area Transportation Authority of the Kansas City Area Transportation District
Kansas-Missouri Boundary Compact
♦*Kansas-Missouri Culture District Compact*
Metropolitan Culture District, Metropolitan Culture Commission
Kansas-Missouri Waterworks Compact
-- dormant or defunct
Kansas-Nebraska Big Blue River Basin Commission
Kansas-Nebraska Big Blue River Compact Administration
♦*Midwestern Higher Education Compact*
Midwestern Higher Education Commission
Missouri River Toll Bridge Compact
Secretary of Transportation
Missouri-Kansas Metropolitan Development District and Agency Compact
Missouri-Kansas Metropolitan Development Agency
-- dormant or defunct
♦*Multistate Lottery Agreement*
Multistate Lottery Board of Directors
Multistate Tax Compact
Multistate Tax Commission
National Guard Mutual Assistance Compact
Plans, Operations and Military Support, Office of Adjutant General - Kansas joined with Missouri. But, the compact has never been used and is not current. It is also likely to be supplanted by recent legislation introduced by the Southern Governors' Association and FEMA.

Nonresident Violator Compact
Chief Examiner's Office, Driver Licensure Bureau, Department of Revenue
Republican River Compact
Republican River Commission
Uniform Act for Out-of-State Parolee Supervision
Adult Compact Administrator

KENTUCKY

Agreement on Detainers
General Counsel, Department of Corrections
Agreement on Qualification of Educational Personnel
Commissioner of Education
Breaks Interstate Park
Breaks Interstate Parks Commission
Central Midwest Interstate Low-Level Radioactive Waste Compact
Central Midwest Compact Commission
Compact for Education
Education Commission of the States
Falls of the Ohio Interstate Park Compact
Falls of the Ohio Interstate Park Commission
commission is inactive
– dormant or defunct
Interstate Compact for the Supervision of Parolees and Probationers
Interstate Compact Administrator – Parole, Probation & Parole Division, Corrections Department
Interstate Compact Administrator – Probation, Probation & Parole Division, Corrections Department
Interstate Compact on Air Pollution
Interstate Air Pollution Control Commission
– dormant or defunct
Interstate Compact on Juveniles
Deputy Compact Administrator, ICJ, Department of Social Services, Cabinet for Human Resources
Interstate Compact on Mental Health
Pharmacist Services Program Manager, Division of Mental Health, Department of Mental Health and Mental Retardation
Interstate Compact on Placement of Children
Interstate Coordinator, ICPC, Department of Social Services, Cabinet for Human Resources
Interstate Corrections Compact
Commissioner, Department of Corrections
Interstate Emergency Management and Disaster Compact
Executive Director, Disaster & Emergency Services, Military Affairs Department
Interstate Environmental Compact
– dormant or defunct
Interstate Library Compact
Department for Libraries and Archives
Interstate Mining Compact
Interstate Mining Compact Commission
Nonresident Violators Compact
Driver License Division, Vehicle Regulation Department, Transportation Cabinet
Ohio River Valley Water Sanitation Compact
Ohio River Valley Water Sanitation Commission
Southeastern Interstate Forest Fire Protection Compact
Southeastern States Forest Fire Protection Commission
Southern Growth Policies Agreement
Southern Growth Policies Board
Southern Regional Education Compact
Southern Regional Education Board
Southern States Energy Compact
Southern States Energy Board
Tennessee River Basin Water Pollution Control Compact
Tennessee River Basin Water Pollution Control Commission
– dormant or defunct
Tennessee-Tombigbee Waterway Development Compact
Tennessee-Tombigbee Waterway Development Authority

Other agencies/officials authorized to enter interstate compacts or agreements.

Gasoline Excise Tax - KRS § 138.227 – 1992
Transportation Cabinet - Authorization for entry into cooperative compacts or agreements
Interstate Compacts on Subsidized Adoptions – KRS §§ 199.595 to 199.5955 – 1986
Deputy Compact Administrator, ICPC, Department of Social Services, Cabinet for Human Resources - Authorizes the Cabinet for Human Resources to enter interstate compacts or agreements with other states for protection of children on behalf of whom adoption assistance is being provided
Interstate Compacts on Solid Waste Management - KRS § 224.18-900 – 1991
Governor - Authorizes the governor to negotiate and enter into compacts with other states relating to the management of solid waste
Interstate Transit Authorities - KRS § 96A.210 – 1970
Authorizes cities and counties on the state line to form a transit authority with political subdivisions in other states
Interstate Water Sanitation Board Control Commissions - KRS § 224.18-710 to 224.18-715 – 1940
This three member board consisting of the governor, secretary of Natural Resources and Environmental Protection Cabinet and one gubernatorial appointee serve as representatives to any interstate water sanitation or control compacts to which Kentucky is a party

LOUISIANA

Central Interstate Low-Level Radioactive Waste Compact
Central Interstate Low-level Radioactive Waste Commission
Compact for Education (Compact for Cooperative Efforts
Education Commission of the States
Driver License Compact

Department of Public Safety and Corrections
Gulf States Marine Fisheries Compact
Gulf States Marine Fisheries Commission
♦*International Fuel Tax Agreement*
Department of Revenue and Taxation
International Motor Vehicle Registration Plan
Department of Public Safety and Corrections
♦*Interstate Emergency Preparedness and Disaster Compact*
The *Louisiana Emergency Assistance and Disaster Act of 1993* enacts into law S733, the *Interstate Emergency Preparedness and Disaster Compact*, which appears to be a modified version of the *Interstate Civil Defense and Disaster Compact*.
Interstate Compact for the Supervision of Parolees and Probationers
Chief Probation and Parole Officer, Department of Public Safety and Corrections
Interstate Compact on Juveniles
Office of Juvenile Services, Department of Public Safety & Corrections
Interstate Compact on Mental Health
Secretary, Department of Health and Human Services
Interstate Compact on the Placement of Children
Office of Community Services, Department of Social Services
Interstate Environmental Compact
Department of Health and Human Resources
-- dormant or defunct
Interstate Library Compact
State Librarian
Interstate Mining Compact
Interstate Mining Compact Commission
Louisiana-Mississippi-Alabama Rapid Rail Transit Compact
Southern Rapid Rail Transit Commission
♦*Mississippi River Interstate Pollution Phase Out Compact*
Mississippi River Interstate Pollution Control Commission
Mississippi-Louisiana Bridge Construction Compact
Mississippi-Louisiana Bridge Authority
-- dormant or defunct
Nonresident Violator Compact (Traffic Violations Compact)
Louisiana Department of Public Safety and Corrections, Office of Motor Vehicles
Red River Compact
Red River Compact Commission
Sabine River Compact
Sabine River Compact Administrator
South Central Interstate Forest Fire Protection Compact
South Central States Forest Fire Protection Compact Commission, Commissioner of Agriculture
Southern Growth Policies Agreement
Southern Growth Policies Board
Southern Interstate Energy Compact
Southern States Energy Board
Southern Regional Education Compact
Southern Regional Education Board
Southern State Police Compact
Southern State Police Administrator's Conference
-- dormant or defunct
♦*Tangipahoa River Waterway Compact*
Louisiana-Mississippi Tangipahoa River Waterway Commission

Other agencies/officials authorized to enter interstate compacts or agreements.
Minerals, Oil and Gas, Oil Spill Prevention and Response - Louisiana: LSA-R.S. 30:2494
Oil Spill Management Coordinator - Authorizes the oil spill management coordinator to enter into compacts or agreements with other states regarding controlling oil, gas and other mineral spills.
Uniform Transfer of Dependents Act - LSA-R.S. 46:401, 46:402 -- 1978
Department of Health & Hospitals - Authorizes the Department of Health & Hospitals to enter into compacts or agreements with other states regarding the interstate transfer of indigent people

MAINE
Adoption Assistance Compact
Commissioner of Human Services
Agreement on Detainers (Interstate Compact on Detainers)
Commissioner of Corrections
Agreement on Qualification of Educational Personnel
Commissioner of Education
Atlantic States Marine Fisheries Compact
Atlantic States Marine Fisheries Commission
Bus Taxation Proration and Reciprocity Agreement
Secretary of State
Compact for Education
Education Commission of the States
Compact on Mental Health
Director of Social Services, Augusta Mental Health Institute
Director of Social Services, Bangor Mental Health Institute
Driver License Compact
Secretary of State
Interpleader Compact
Secretary of State
Interstate Civil Defense and Disaster Compact
Maine Emergency Management Director
Interstate Compact for the Supervision of Parolees and Probationers
Adult Compact Administrator, Probation & Parole Division, Corrections Department
Interstate Compact on Placement of Children

Director, Division of Child & Family Services, Bureau of Social Services

Interstate Compact on Juveniles (Uniform Interstate Compact on Juveniles)
Deputy Compact Administrator for Interstate Compact on Juveniles, Juvenile Services, Probation and Parole Division

Interstate Corrections Compact
Commissioner of Corrections

Interstate Library Compact
State Librarian

Interstate Transfer of Indigent Persons
Commissioner of Human Services

Low-level Radioactive Waste Disposal Compact (Texas)
Texas Low-Level Radioactive Waste Disposal Compact Commission

Maine-New Hampshire Boundary Compact
P.L. 1993, chapter 361 repealed section 251 that established the commission, but did not repeal sections 252-259 which further describe the Commission and its powers

Maine-New Hampshire School District Compact
Commissioner of Education

Mentally Disordered Offenders Compact
Department of Mental Health & Retardation

New England Radiological Health Protection Compact
Commissioner of Human Services

New England Higher Education Compact
New England Board of Higher Education

New England Interstate Corrections Compact
Commissioner of Corrections

New England Interstate Water Pollution Control Compact
New England Interstate Water Pollution Control Commission

New England Planning Compact
New England Interstate Planning Commission
-- dormant or defunct

New England State Police Compact
New England State Police Administrator's Conference

Nonresident Violator Compact
Secretary of State

Northeast Interstate Dairy Compact
Commissioner of Agriculture

Pest Control Compact
Director, Bureau of Forestry

Taxation of Motor Fuels Consumed by Interstate Buses
State Tax Assessor, Bureau of Taxation

Tri-State Lotto Compact
Tri-State Lotto Commission

Other agencies/officials authorized to enter interstate compacts or agreements.

Animal Disease Control - 7 M.R.S.A. § 1810 -- 1971
Commissioner of Agriculture

Commercial Feed - 7 M.R.S.A. 723 -- 1959
Commissioner of Agriculture

Hazardous and Solid Waste - 38 M.R.S.A. § 2140 -- 1989
Maine Waste Management Agency/Department of Environmental Protection - Encourages a compact to improve management, recycling and reduction of solid waste

Interchange of Government Employees
Maine State Agencies - Authorizes Maine state agencies to exchange employees with other states or the federal government for assignments of up to one year per employee.

Interstate Transfer of Indigent Persons - Maine. 22 M.R.S.A. § 3102 [1933]
Commissioner of Human Services

Manufactured Housing Board - Maine. 10 M.R.S.A. § 9048 [1977]

Oil Spill Prevention (supplementary agreements) - 38 M.R.S.A. § 553 -- 1969
Governor

Regional Overdimensional Truck Permit Agreement - 29 M.R.S.A. § 1705 -- 1987
Commissioner of Transportation - Authorizes Commissioner of Transportation to enter into interstate compacts or agreements concerning oversize commercial truck carriers

MARYLAND

Agreement on Qualification of Educational Personnel
Assistant Superintendent of Certification and Accreditation, Department of Education

Appalachian States Low-Level Radioactive Waste Compact
Appalachian States Low-level Radioactive Waste Commission

Atlantic States Marine Fisheries Compact
Atlantic States Marine Fisheries Commission

Compact for Education
Education Commission of the States

Driver License Compact
Director, Motor Vehicle Administrative Adjudication

Interstate Agreement on Detainers
Assistant Attorney General, Office of the Attorney General, Department of Public Safety and Correctional Services

Interstate Compact on Juveniles
Deputy Compact Director, Department of Juvenile Services

Interstate Compact on Mental Health
Director, Mental Hygiene Administration, Department of Health and Mental Hygiene

Interstate Compact on the Placement of Children
Federal Liaison, Department of Human Resources

Interstate Compact on the Potomac River Basin
Interstate Commission on the Potomac River Basin

Interstate Corrections Compact
Interstate Corrections Compact Administrator

Department of Public Safety and Correctional Services
Interstate Emergency Management and Civil Defense Compact
State Emergency Operations Center, Emergency Management Agency
Interstate Environment Compact
Secretary of Natural Resources
– dormant or defunct
Interstate Library Compact
Assistant State Superintendent, Division of Library Development & Services
Interstate Mining Compact
Interstate Mining Compact Commission
Interstate Oil and Gas Compact
Interstate Oil and Gas Compact Commission
Interstate Pest Control Compact
Plant Protection Section, Department of Agriculture
Middle Atlantic Interstate Forest Fire Protection Compact
State Fire Supervisor, Forestry Division, Department of Natural Resources
Nonresident Violator Compact
American Association of Motor Vehicle Administrators, MD Supervisor, Driver Control and Records
♦*Potomac Highlands Airport Authority Compact*
Potomac Highlands Airport Authority - Creates an authority to operate a regional airport betweencounties in Maryland and West Virginia. This compact was dormant until 1990 when state and local officials in both states signed an agreement to activate it
♦*Potomac River Bridges Towing Compact*
No administrator per se. State troopers and local law enforcement officers are authorized to direct traffic and move disabled vehicles from any part of Potomac River bridges
Potomac River Compact of 1958 (Potomac Valley Conservancy District Compact)
Potomac River Fisheries Commission
Southern Regional Education Compact
Southern Regional Education Board
Southern States Energy Compact
Southern States Energy Board
Susquehanna River Basin Compact
Susquehanna River Basin Commission
Tri-State Agreement on the Chesapeake Bay
Chesapeake Bay Commission
Uniform Out-of-State Parolee Supervision Act
Parole and Probation Division, Department of Public Safety and Correctional Services
Washington Metropolitan Area Transit Authority Compact
Washington Metropolitan Area Transit Authority
Washington Metropolitan Area Transit Regulation Compact
Washington Metropolitan Area Transit Commission

MASSACHUSETTS
Agreement on Detainers
Commissioner, Department of Corrections
Atlantic States Marine Fisheries Compact
Atlantic States Marine Fisheries Commission
♦*Bay State - Ocean State Compact (Compact with Rhode Island Relating to Bays Systems)*
Bay State, Ocean State Compact Commission
Compact for Education
Education Commission of the States
Compact on Mental Health
Commissioner of Mental Health
Connecticut River Atlantic Salmon Compact
Connecticut River Atlantic Salmon Commission (staffed by U.S. Department of Fish & Wildlife)
Driver License Compact (Motor Vehicle Convictions)
Secretary of Public Safety
Emergency Military Aid Compact, New York
Governor or military representative
Interstate Agreement on Qualification of Educational Personnel
State Board of Education
Interstate Compact for the Supervision of Parolees and Probationers
County, Federal and Interstate Manager, Department of Corrections
♦*Interstate Compact on Adoption and Medical Assistance*
Department of Social Services and Department of Public Welfare
Interstate Compact on Juveniles
Department of Youth Services
Interstate Compact on the Placement of Children
Department of Social Services
Interstate Library Compact
Supt. of State Libraries
♦*Interstate Truck Permits Compact*
Highway Department
Merrimack River Basin Flood Control Compact
Merrimack River Valley Flood Control Commission
New England Corrections Compact
Commissioner, Department of Corrections
New England Higher Education Compact
New England Board of Higher Education
New England Interstate Water Pollution Control Compact
New England Interstate Water Pollution Control Commission
New England Radiological Protection Compact
Public Health Commissioner, Department of Public Welfare
New England Regional Planning Compact
Division of Planning, through the Attorney General
– dormant or defunct
New England State Police Compact
New England State Police Administrators' Conference
New England States Emergency Military Aid Compact
Governor or military representative

Taxation of Motor Fuels Consumed by Interstate Buses
Commissioner of Revenue
Thames River Flood Control Compact
Thames River Flood Control Compact Commission
Vehicle Equipment Safety Compact
American Association of Motor Vehicle Administrators

Other agencies/officials authorized to enter interstate compacts and agreements.
Agreements to Transport and Care for Welfare Recipients - ALM GL 18.14 – 1967
Public Health Commissioner, Department of Public Welfare - Authorizes the Department of Public Welfare to enter into reciprocal agreements with other states regarding interstate transportation of poor and indigent people, and to arrange for the acceptance and support of people receiving public aid in other states.
Fish and Game Laws - ALM GL 130.15A – 1945
Division of Law Enforcement, Environmental Police Officer - Permits reciprocal law enforcement by environmental police, game wardens or natural resources officers in adjacent waters of member states.

MICHIGAN
Agreement on Detainers
Department of Corrections
Agreement on Qualification of Educational Personnel
Office of Teacher Preparation and Certification, Department of Education
Boundary Compact between Minnesota, Wisconsin and Michigan
Compact for Education
Education Commission of the States
Compact on Mental Health
Bureau of Hospitals and Centers, Department of Mental Health
Cooperation with States Bordering on Great Lakes
Great Lakes Compact Commission
Great Lakes Basin Compact
Great Lakes Commission
International Registration Plan (Motor Carriers Reciprocity)
Interstate Compact for the Supervision of Parolees and Probationers
Field Operations Administration, Department of Corrections
Interstate Compact on Juveniles
Division of Foster Care Policy, Department of Social Services
Interstate Compact on Placement of Children
Department of Social Services, Division of Foster Care Policy
Interstate Corrections Compact
Facilities Administration, Department of Corrections
Interstate High Speed Intercity Rail Passenger Network Compact
Interstate Rail Passenger Advisory Council
Interstate Oil and Gas Compact
Interstate Oil and Gas Compact Commission
Interstate Pest Control Compact
♦*Midwestern Higher Education Compact*
Midwestern Higher Education Commission
♦*Midwestern Interstate Low-Level Radioactive Waste Compact*
Midwest Interstate Low-Level Radioactive Waste Commission
Multistate Reciprocal Agreement
Multistate Tax Compact
Multistate Tax Commission
♦*Tri-State High Speed Rail Line Compact*
Tri-State High Speed Rail Commission

Other agencies/officials authorized to enter interstate compacts or agreements
Emergency Preparedness - M.C.L.A. § 30.404 – 1976
Emergency Management Division, State Police - In the event of a disaster, the 1976 *Michigan Emergency Management Act* authorizes the governor to enter into reciprocal aid agreements or compacts with other states to furnish or exchange food, clothing, medicine, and other supplies, engineering services, emergency housing, police services, the services of the National Guard when not mobilized for federal service or state defense force.
Weather Modification Interstate Compacts - M.C.L.A. § 295.107 – 1978
The Michigan Department of Agriculture exchanges information with Minnesota, but have not negotiated a compact.

MINNESOTA
Agreement on Detainers
Commissioner of Corrections
♦*Agricultural Grain Marketing Compact*
Interstate Agricultural Grain Marketing Commission, MN Commissioner or Agriculture
Boundary Compact between Michigan, Wisconsin and Minnesota
Compact for Education
Education Commission of the States
Compact on Mental Health
Commissioner of Human Services
Driver License Compact
Commissioner of Public Safety
Great Lakes Basin Compact
Great Lakes Commission
♦*International Fuel Tax Agreement (IFTA) (Motor Carriers)*
Prorate and Reciprocity Administrator, Driver & Vehicle Services Division, Department of Public Safety
International Registration Plan
Prorate and Reciprocity Administrator, Driver & Vehicle

Services Division, Department of Public Safety
Interstate Compact for the Supervision of Parolees and Probationers
Commissioner of Corrections
♦*Interstate Compact on Adoption and Medical Assistance*
Consultant, Family & Children Services Division, Department of Human Services
♦*Interstate Compact on Industrialized/Modular Buildings*
Industrialized/Interstate Modular Buildings Commission
Interstate Compact on Juveniles
Commissioner of Corrections
Interstate Compact on Placement of Children
Commissioner of Human Services
Interstate Compact on Qualification of Educational Personnel
Commissioner of Education
Interstate Corrections Compact
Commissioner of Corrections
Interstate Library Compact
State Board of Education
Interstate Pest Control Compact
♦*Midwest Interstate Low-level Radioactive Waste Compact*
Midwest Interstate Low-level Radioactive Waste Commission
♦*Midwestern Higher Education Compact*
Midwestern Higher Education Commission
Minnesota-Wisconsin Boundary Compact
Minnesota-Wisconsin Boundary Area Commission
Multistate Tax Compact
Multistate Tax Commission

Other agencies/officials authorized to enter interstate compacts or agreements

Colleges, Universities and Vocational Education (tuition) - M.S.A. 136A.08 – 1967
Coordinator, Campus-based Programs, Higher Education Coordinating Board - Authorizes the Higher Education Coordinating Board to enter reciprocal agreements with adjacent states [Iowa (limited), Minnesota, North Dakota, South Dakota, Wisconsin] and Canadian provinces relating to non-resident tuition at higher education institutions.
Electricity, siting - M.S.A. § 116C.53 – 1973
Environmental Quality Board - Authorizes the Minnesota Environmental Quality Board to hold joint hearings with adjacent states (Iowa, Minnesota, North Dakota, South Dakota, Wisconsin) regarding the routes for interstate, high-voltage transmission lines and the location of large, electric power generating plants.
Rail Service Improvement Program - M.S.A. 222.52 – 1976
Railroad Administration Office, Department of Transportation - Authorizes the Minnesota Department of Transportation to enter agreements with adjacent states [Iowa, Minnesota, North Dakota, South Dakota, Wisconsin] to rehabilitate interstate railroad lines.

MISSISSIPPI

♦*Arkansas-Mississippi Great River Bridge Construction*
Arkansas-Mississippi Great River Bridge Authority
(Ameriport) Compact for Development of Deep Draft Harbor and Terminal
Gulf Coast Superport Development Authority
– dormant or defunct
Compact for Education
Education Commission of the States
Driver License Compact
Department of Public Safety
Gulf States Marine Fisheries Compact
Gulf States Marine Fisheries Commission
♦*Interstate Agreements for Protection of Children being provided Adoption Assistance*
Interstate Civil Defense and Disaster Compact
Interstate Compact for the Supervision of Parolees and Probationers
Interstate Compact on Environment
– dormant or defunct
Interstate Compact on Juveniles
Interstate Compact on Placement of Children
♦*Interstate Earthquake Emergency Compact*
Interstate Library Compact
Mississippi Library Commission
Interstate Oil and Gas Compact
Interstate Oil Compact Commission
Mississippi-Alabama Railroad Authority Compact
Mississippi-Alabama Railroad Authority
♦*Mississippi-Louisiana Rapid Rail Transit Compact*
Southern Rapid Rail Transit Commission
*Non-Resident Violators Compact of 19***
South Central Forest Fire Protection Compact
South Central Interstate Forest Fire Protection Compact Commission, State Forester
♦*Southeast Interstate Low-level Radioactive Waste Management Compact*
Southeast Interstate Low-level Radioactive Waste Management Commission
Southeastern Forest Fire Protection Compact
Southeastern States Forest Fire Protection Compact Commission, State Forester
Southern Growth Policies Compact
Southern Growth Policies Board
Southern Interstate Nuclear Compact Southern States Energy Compact
Southern States Energy Board
Southern Regional Education Compact
Southern Regional Education Board
Tennessee River Basin Water Pollution Control Compact
Tennessee River Basin Water Pollution Control Commission
– dormant or defunct

Tennessee-Tombigbee Waterway Development Compact
Tennessee-Tombigbee Waterway Development Authority
♦*U.S. Highway 82 Four Lane Construction Compact*
U.S. Highway 82 Four Lane Construction Authority

MISSOURI

Agreement on Detainers
General Counsel, Department of Corrections
Bi-State Development Agency Compact (and Bi-State Metropolitan District)
Bi-State Development Agency
Compact Between Illinois and Missouri creating an Illinois-Missouri Bridge Commission
Illinois-Missouri Bridge Commission
– dormant or defunct
Compact between Illinois and Missouri creating a Missouri-Illinois-Jefferson-Monroe Bridge Commission
Missouri-Illinois-Jefferson-Monroe Bridge Commission
– dormant or defunct
Compact between Tennessee and Missouri creating a Tennessee-Missouri Bridge Commission
Tennessee-Missouri Bridge Commission
– dormant or defunct
Compact for Education
Education Commission of the States
Drivers License Compact
Director, Department of Revenue
♦*Interstate Adoption Assistance Compact*
Department of Social Services
Interstate Compact for the Supervision of Parolees and Probationers
Chairman, Probation and Parole Board
♦*Interstate Compact on Desegregation*
Desegregation Commission - Permits K-12 students in Johnson County, Kansas to participate in any desegregation plan developed with any Missouri county of the first classification with a charter form of government and which contains all or part of a city with a population of 350,000 or more
Interstate Compact on Juveniles
Division of Youth Services
Interstate Compact on Mental Health
Director, Department of Mental Health
Interstate Compact on Mentally Disordered Offender
Department of Mental Health and Department of Corrections
Interstate Compact on Placement of Children
Division of Family Services
Interstate Corrections Compact - 1982 version replaces 1971 version
Director, Department of Corrections
♦*Interstate Earthquake Emergency Compact*
Emergency Management Agency
♦*Interstate High Speed Intercity Rail Passenger Network Compact*
Interstate Rail Passenger Advisory Council
Interstate Mining Compact
Interstate Mining Compact Commission
Kansas City Area Transportation Compact
Kansas City Area Transportation Authority
Kansas-Missouri Air Quality Compact
Kansas-Missouri Air Quality Commission
– dormant or defunct
Kansas-Missouri Flood Prevention and Control Compact
Kansas-Missouri Flood Prevention Commission
♦*Midwest Higher Education Compact*
Midwestern Higher Education Commission
♦*Midwest Interstate Low-level Radioactive Waste Compact*
Midwest Interstate Low-level Radioactive Waste Commission
♦*Missouri and Kansas Metropolitan Culture District Compact*
Metropolitan Culture Commissions
♦*Missouri River Barge Compact*
– dormant or defunct
Missouri River Toll Bridge Compact
State Highways and Transportation Commission
♦*Missouri-Nebraska Boundary*
Multistate Tax Compact
Multistate Tax Commission
Nonresident Violator Compact
American Association of Motor Vehicle Administrators
Southern States Energy Compact (Southern Interstate Nuclear Compact)
Southern States Energy Board
Vehicle Equipment Safety Compact
American Association of Motor Vehicle Administrators

Other agencies/officials authorized to enter interstate compacts or agreements.

Colleges and Universities Regional College of Optometry - V.A.M.S. § 172.775 – 1978
Board of Curators, University of Missouri - Authorizes the board of curators of the University of Missouri to enter into agreements with other states to establish jointly operated schools of optometry

MONTANA

Agreement on Detainers
Interstate Compact Supervisor, Corrections Division, Department of Corrections and Human Services
Compact on Mental Health
Compact Administrator, Mental Health Division, Department of Corrections and Human Services
Driver License Compact
Compact Administrator, Motor Vehicle Division, Department of Justice
Interstate Agreement on Qualification of Educational Personnel
Superintendent of Public Instruction
Interstate Compact for the Supervision of Parolees and

Probationers
Deputy Compact Administrator, Corrections Division, Department of Corrections and Human Services
♦*Interstate Compact on Adoption Assistance*
Department of Family Services and Department of Social and Rehabilitation Services
Interstate Compact on Juveniles
Administrative Corrections Officer, Juvenile Corrections Division, Department of Corrections and Human Services
Interstate Compact on the Placement of Children
ICPC Administrator, Department of Family Services
Interstate Corrections Compact
Compact Administrator, Corrections Division, Department of Corrections and Human Services
Interstate Library Compact
State Librarian
Interstate Oil and Gas Compact
Interstate Oil and Gas Compact Commission
Multistate Highway Transportation Agreement
Motor Carrier Services Division, Department of Transportation
Multistate Tax Compact
Multistate Tax Commission
Mutual Aid
Disaster & Emergency Services Division, Department of Military Affairs
♦*Northwest Interstate Compact on Low-level Radioactive Waste Management*
Northwest Low-Level Radioactive Waste Compact Committee
Vehicle Equipment Safety Compact
American Association of Motor Vehicle Administrators
Western Interstate Corrections Compact
Compact Administrator, Corrections Division, Department of Corrections and Human Services
Western Interstate Nuclear Compact
Western Interstate Nuclear Board
Western Regional Higher Education Compact
Western Interstate Commission For Higher Education
Yellowstone River Compact
Yellowstone River Compact Commission

Other agencies/officials authorized to enter interstate compacts or agreements
Water Compacts - MCA 85-1-223 --1933
Compact Administrator, Water Resources Division, Department of Natural Resources and Conservation -- Authorized to enter water compacts

NEBRASKA
Agreement on Detainers
Special Services, Department of Correctional Services
Big Blue River Basin Compact
Kansas-Nebraska Big Blue River Commission
♦*Central Interstate Low-Level Radioactive Waste Compact Commission*
Central Interstate Low-Level Radioactive Waste Compact Commission
Compact for Education
Education Commission of the States
Driver License Compact
Department of Motor Vehicles
Interstate Agreement on Qualification of Educational Personnel
Commissioner of Education
Interstate Civil Defense and Disaster Compact
State Civil Defense Director
♦*Interstate Compact on Agricultural Grain Marketing*
Interstate Agricultural Grain Marketing Commission
Interstate Compact on Mental Health
Director of Public Institutions
Interstate Compact on Juveniles
Juvenile Parole Administrator, Office of Juvenile Services
Interstate Compact on the Placement of Children
Permanency Planning Review Administrator, Human Services Division, Department of Social Services
Interstate Compact to Conserve Oil and Gas
Interstate Oil and Gas Commission
Interstate Corrections Compact
Compact Administrator, Adult Parole, Department of Correctional Services
Iowa-Nebraska Boundary Compact
Midwest Nuclear Compact
Midwest Nuclear Board
-- dormant or defunct
Midwestern Education Compact
Midwestern Education Board
-- dormant or defunct
Midwestern Higher Education Compact
Midwestern Higher Education Commission
Missouri River Barge Traffic Compact
Director, Department of Water Resources
-- dormant or defunct
Nebraska-Missouri Boundary Compact
♦*Nebraska-South Dakota Boundary Compact*
Nebraska Boundary Commission
Nebraska-South Dakota-Wyoming Water Compact (Ponca Creek)
Nebraska-South Dakota-Wyoming Water Compact Commission
Nonresident Violator Compact of 19??
Director of Motor Vehicles
Republican River Compact
Republican River Compact Administration
South-Platte River Compact
South-Platte River Compact Commission
Uniform Act for Out-of-State Parolee Supervision
Adult Parole Administration, Department of Correctional Services
Wyoming-Nebraska Compact on Upper Niobrara River

NEVADA

Agreement on Detainers
Director, Department of Prisons
♦*California-Nevada Compact for Jurisdiction on Interstate Waters*
Local law enforcement agencies
California-Nevada Interstate Compact
State Engineer, Department of Conservation and Natural Resources - Congress never ratified the compact. California abolished its commission, but Nevada apparently still has an active commission.
-- dormant or defunct
Colorado River Compact
Colorado River Commission
Columbia Interstate Compact
Columbia Basin Interstate Compact Commission
-- dormant or defunct
Driver License Compact
Driver's License Division
Interstate Civil Defense And Disaster Compact
Division of Emergency Management, Department of Motor Vehicles and Public Safety
Interstate Compact Defining a Portion of the Arizona-Nevada Boundary on the Colorado River
Colorado River Boundary Commission of Nevada
Interstate Compact on Juveniles
Division of Child and Family Services, Department of Human Resources
♦*Interstate Compact on Adoption and Medical Assistance*
Division of Child and Family Services
Interstate Compact on Education
Education Commission of The States
Interstate Compact on the Placement of Children
Division of Child and Family Services
Interstate Compact to Conserve Oil and Gas
Interstate Oil and Gas Compact Commission
Interstate Corrections Compact
Division of Parole & Probation
Multistate Highway Transportation Agreement
Director, Department of Transportation
♦*Rocky Mountain Low-Level Radioactive Waste Compact*
Rocky Mountain Low-Level Radioactive Waste Board
Tahoe Regional Planning Compact
Tahoe Regional Planning Agency
Uniform Act for Out-of-State Parolee Supervision
Division of Parole and Probation, Department of Motor Vehicles and Public Safety
Western Interstate Energy Compact (Western Interstate Nuclear Compact)
Western Interstate Nuclear Board
Western Regional Higher Education Compact
Western Interstate Commission For Higher Education
Wildlife Violator Compact
Division of Wildlife

Other agencies/officials authorized to enter interstate compacts or agreements.

Emergency Management, Mutual Aid Agreements - NRS 414.060 -- 1965
Governor - Authorizes governor to enter into and coordinate mutual aid agreements with other states and the federal government concerning emergencies and disasters.
Groundwater Basins, Agreements for Cooperative Management - NRS 532.175 -- 1991
State Engineer, Department of Conservation and Natural Resources - Authorizes the state engineer to enter into agreements with neighboring states concerning cooperative management of shared groundwater basins.
Handicapped Persons, Education and Maintenance - NRS 395.010 -- 1993
Superintendent of Public Instruction - Authorizes the superintendent of public instruction to place eligible handicapped people in foster homes outside Nevada to further the education of the child.
Highway Construction Agreements - NRS 408.141 -- 1957
Department of Transportation - Authorizes the Department of Transportation to enter agreements with adjoining states concerning building and maintaining highways at or near state boundaries.
Interlocal Cooperation Act - NRS 277.080 -- 1965
Authorizes Nevada local governments and public agencies to provide joint or cooperative services and facilities with similar agencies in other states. Attorney General must approve agreements.
Interstate Highway Fee Apportionment Act - NRS 706.801 -- 1971
Department of Motor Vehicles and Public Safety - Authorizes the Department of Motor Vehciles and Public Safety to enter into agreements with other states to exempt vehicle registration fees or taxes.
Police Services - NRS 223.240 -- 1975
Governor - Authorizes the governor to enter mutual or reciprocal agreements or compacts with other states or the federal government concerning furnishing or exchanging police services, facilities or equipment.
Rail Service - NRS 705.423 -- 1979
Director, Department of Transportation - Authorizes the Department of Transportation to enter agreements, contracts or compacts with other states, the federal government or railroad corporations which are consistent with the state's rail service plan and necessary to preserve or restore freight rail service to the state.
Reciprocal Agreements for Hunting and Fishing Licenses - NRS 502.045 -- 1949
Board of Wildlife Commissioners - Authorizes Board of Wildlife Commission to enter into reciprocal hunting and fishing licensing agreements with adjoining states.
Weather Modification - NRS 544.080 -- 1961
Director, Department of Conservation and Natural

Resources - Authorizes the director of the department of conservation and natural resources to represent Nevada concerning compacts related to weather modification.

NEW HAMPSHIRE

Agreement on Detainers
Commissioner, Department of Corrections
Atlantic States Marine Fisheries Compact
Atlantic States Marine Fisheries Commission
Bus Tax Proration and Reciprocity Agreement
Compact for Education
Education Commission of The States
Connecticut River Valley Flood Control Compact
Connecticut River Valley Flood Control Commission
Driver License Compact
Commissioner of Safety
International Registration Plan
American Association of Motor Vehicle Administrators
Interpleader Compact
Secretary of State
Interstate Agreement on Qualification of Educational Personnel
Commissioner of Education
Interstate Civil Defense Compact
Director of Civil Defense
Interstate Compact on Mental Health
Interstate Compact on the Placement of Children
Chief, Bureau of Child Welfare
♦*Interstate Compact on Adoption Assistance for Hard to Place Children*
Commissioner, Department of Health and Human Services
Interstate Compact on Juveniles
Interstate Compact on the Mentally Disordered Offender
Department of Health and Human Services
Interstate Library Compact
State Librarian or Commissioner of Cultural Affairs
Interstate Solid Waste Compact
Municipal governments
Maine-New Hampshire Commission on Oceanography
– dormant or defunct
Maine-New Hampshire Interstate Bridge Authority
Maine-New Hampshire Interstate Bridge Authority
Maine-New Hampshire School District Compact (New Hampshire-Maine Interstate School Compact)
Commissioner of Education
Merrimack River Flood Control Compact
New England Compact on Radiological Health Protection
Director, State Radiation Control Agency
New England Higher Education Compact
New England Board of Higher Education
New England Interstate Corrections Compact
Commissioner of Corrections
New England Interstate Planning Compact
New England Interstate Planning Commission
– dormant or defunct
New England (State) Police Compact
New England State Police Administrators Conference; Director, Division of State Police
♦*New England Truckers Compact*
Commissioner of Transportation
New England Water Pollution Control Compact
New England Water Pollution Control Commission
♦*New Hampshire-Massachusetts Interstate Sewage and Waste Disposal Facilities Compact*
New Hampshire-Vermont Interstate School Compact
Commissioner of Education
♦*New Hampshire-Vermont Interstate Sewage and Waste Disposal Facilities Compact*
New Hampshire-Vermont School District Compact, (Dresden or Hanover-Norwich Interstate School District)
Commissioner of Education
Northeastern Forest Fire Protection Compact (Northeastern Interstate Forest Fire Protection Compact)
Northeastern Fire Protection Commission
Northeastern Water and Related Land Resources Compact
– dormant or defunct
♦*Northern New England Low-Level Radioactive Waste Compact*
Northern New England Low-Level Radioactive Waste Commission
Northern New England Medical Needs Compact
Tri-state Regional Medical Needs Board, Commissioner of Health
Pest Control Compact
Commissioner of Agriculture
Taxation on Motor Fuels Consumed by Interstate Buses
♦*Tri-State Lotto Compact*
Tri-State Lotto Commission

Other agencies/officials authorized to enter interstate compacts or agreements

Commission on Interstate Cooperation - RSA 19:1-19:6 -- 1935, effective 1953
Commission on Interstate Cooperation - Facilitates membership in The Council of State Governments, adoption of compacts, uniform or reciprocal statutes
Interstate Solid Waste Compact - RSA 53D:1 [1981]
Authorizes Vermont and New Hampshire municipalities to jointly build and maintain solid waste disposal facilities.
Military Defense of Interstate Bridges - RSA 234:42 -- 1981
Governor - Authorizes the governor to enter into agreements with surrounding states to protect interstate bridges in the event of war or military emergency.
Milk, Uniform Regulation - RSA 425:15 -- 1985
Commissioner, Department of Agriculture - Authorizes the commissioner of agriculture to enter agreements with other states concerning uniform regulation of milk prices

and production.

New England Truck Permit Agreement for Oversize, Non-divisible, Interstate Loads - RSA 266:24-b – 1988
Commissioner of Transportation - Authorizes the commissioner of transportation to enter multistate compacts to provide uniform administration and regulation of fees and permits concerning oversize, overweight trucks engaged in interstate operations.

NEW JERSEY

Agreement on the Qualification of Educational Personnel (Transfer of Teacher Credentials Act)
Commissioner of Education
Atlantic States Marine Fisheries Compact
Atlantic States Marine Fisheries Commission
Delaware River and Bay Authority Compact
Delaware River and Bay Authority
Delaware River Basin Compact
Delaware River Basin Commission
Delaware River Joint Toll Bridge Compact
Delaware River Joint Toll Bridge Commission
Delaware River Port Authority
Delaware River Port Authority
Delaware Valley Urban Area Compact
Delaware Valley Regional Planning Commission
Driver License Compact
Director of Motor Vehicles
Education Compact
Education Commission of the States
Interpleader Compact
Interstate Agreement on Detainers
Deputy Compact Administrator, Department of Corrections
Interstate Civil Defense and Disaster Compact
State Director, Office of Emergency Services
Interstate Compact for Mutual Military Aid in an Emergency
Committee for Mutual Military Aid - The original compact was between New Jersey and New York. Provides for mutual military aid and assistance in an emergency by the military forces of a signatory state to the military forces of the other signatory states or the United States, including, among other missions, protecting interstate bridges, tunnels, ferries, pipe lines, communications facilities, plants and facilities, and military support of civil defense agencies. Provides for fresh pursuit in case of an emergency, by the military forces of the signatory states of enemy forces seeking to overthrow the signatory states' governments, or federal government. Emergency means invasion or other hostile action, disaster, insurrection or imminent danger thereof. Military forces include the organized militia or any force thereof, of a signatory state.
Interstate Compact for the Supervision of Parolees and Probationers
Deputy Compact Administrator (Parole), Department of Corrections
Interstate Technician (Probation), Department of Corrections
♦*Interstate Compact on Industrialized/Modular Buildings*
Interstate Industrialized/Modular Buildings Commission
Interstate Compact on the Placement of Children
Supervisor, Interstate Compact Office, Department of Human Services
Interstate Compact on Juveniles
ICJ Administrator, Administrative Office of the Courts
Interstate Compact on Mental Health
Acting Medical Director, Division of Mental Health and Hospitals, Department of Human Services
Interstate Corrections Compact
Deputy Compact Administrator, Department of Corrections
Mid-Atlantic States Air Pollution Control Compact
Mid-Atlantic States Air Pollution Control Commission – dormant or defunct
Mid-Atlantic States Police Compact
– dormant or defunct
Middle Atlantic Forest Fire Protection Compact
Commissioner of Conservation and Economic Development
Nonresident Violators Compact
American Association of Motor Vehicle Administrators
♦*Northeast Interstate Low-Level Radioactive Waste Compact*
Northeast Interstate Low-Level Radioactive Waste Commission
Palisades Interstate Park
Palisades Interstate Park Commissioner
Pest Control Compact
Secretary of Agriculture
Port Authority of New York and New Jersey
Port Authority of New York and New Jersey
Tri-State Compact for Pollution Abatement
Interstate Sanitation Commission
Tri-State Regional Planning Compact
– dormant or defunct
Tri-State Transportation Commission
Connecticut, New Jersey, New York – dormant or defunct
Vehicle Equipment Safety Compact
American Association of Motor Vehicle Administrators
Waterfront Commission Compact
Waterfront Commission of New York Harbor

Other agencies/officials authorized to enter interstate compacts or agreements

Interstate Communication Facilities, Emergency Protection - N.J.S.A. 38A:17-1, 38A:17-2 – 1963
Governor - Authorizes the governor to enter agreements with bordering states to protect interstate bridges, tunnels, ferries and communication facilities in the event of enemy attacks, national disasters or emergency.

Interstate Compacts for Military Aid - N.J.S.A. 38A:18-1, 38A:18-2 – 1951
Authorizes the governor to enter compacts or agreements with other states to provide mutual military aid in an emergency.

NEW MEXICO

Agreement on Detainers
Secretary of Corrections
Animas-La Plata Project Compact
Interstate Stream Commission
Canadian River Compact
Canadian River Commission; NM Interstate Stream Commission
Colorado River Compact
NM Interstate Stream Commission
Compact for Education
Education Commission of the States
Western Regional Education Compact (Compact for Western Regional Cooperation in Higher Education)
Western Interstate Commission for Higher Education
Costilla Creek Compact
Costilla Creek Commission
Cumbres and Toltec Scenic Railroad Compact
Cumbres and Toltec Scenic Railroad Commission
Driver License Compact
Director, Motor Vehicle Division, Taxation and Revenue Department
♦*Interstate Compact on Adoption and Medical Assistance*
Children, Youth & Families Department, Social Services Division
♦*Interstate Compact on Agricultural Grain Marketing*
Interstate Agricultural Grain Marketing Commission
Interstate Compact on Juveniles
Children, Youth and Families Department, Services Division
Interstate Compact on Mentally Disordered Offenders
Interstate Compact on the Placement of Children
Children, Youth & Families Department, Social Services Division
Interstate Corrections Compact
Secretary of Corrections
Interstate Library Compact
State Libranan
La Plata River Compact
La Plata River Compact Commission
Multistate Tax Compact
Multistate Tax Commission
Nonresident Violator Compact
American Association of Motor Vehicle Administrators
Pecos River Compact
Pecos River Commission
Pest Control Compact
Secretary of Agriculture
Rio Grande Compact
Rio Grande Compact Commission
♦*Rocky Mountain Low-Level Radioactive Waste Compact*
Rocky Mountain Low-Level Radioactive Waste Compact Board
The Interstate Compact on Mental Health
Department of Health, Mental Health Division
Uniform Act for Out-of-State Parolee Supervision
Chief of the Field Services Bureau of the Corrections Division of the Criminal Justice Department
Upper Colorado River Basin
Upper Colorado River Commission
Vehicle Equipment Safety Compact
American Association of Motor Vehicle Administrators
Western Interstate Corrections Compact
Secretary of Corrections
Western Interstate Nuclear Compact
Western Interstate Energy Board

NEW YORK

Agreement on Detainers
Department of State File #17
Atlantic States Marine Fisheries Compact
Atlantic States Marine Fisheries Commission
Buffalo and Fort Erie Bridge Compact
Buffalo and Fort Erie Bridge Authority
Canada and New York International Bridge Compact
Civil Defense and Disaster Compact
Governor's Chief of Staff
Compact for Education
Education Commission of the States
Compact on Mental Health
Commissioner of Mental Health
Delaware River Basin Compact
Delaware River Basin Commission
Delaware River Basin Water Commission Compact
Delaware River Basin Water Commission
– dormant or defunct
Driver License Compact
Commissioner of Motor Vehicles
Great Lakes Basin Compact
Great Lakes Commission
Interpleader Compact
Secretary of State
Interstate Agreement on Qualification of Educational Personnel
Commissioner of Education
Interstate Compact for the Supervision of Parolees and Probationers
Chairman of the Board, Division of Parole
Interstate Compact on Juveniles
Department of State File #14
Interstate Compact on Placement of Children
Commissioner of Social Services
♦*Interstate High Speed Intercity Rail Passenger Network Compact*
Interstate Rail Passenger Advisory Council

Interstate Library Compact
Commissioner of Education
Interstate Oil and Gas Compact
Interstate Oil and Gas Compact Commission
Lake Champlain Basin Compact
Interstate Commission on Lake Champlain Basin
– dormant or defunct
Mid-Atlantic States Air Pollution Control Compact
Mid-Atlantic States Air Pollution Control Commission
– dormant or defunct
Mutual Military Aid Compact
Governor's Chief of Staff
New England Interstate Water Pollution Control Compact
New England Interstate Water Pollution Control Commission
New York-Connecticut Railroad Se
Metro North Commuter Railroad
New York-New Jersey Port Authority Compact
Port Authority of New York and New Jersey
Nonresident Violator Compact
Commissioner, Department of Motor Vehicles
Northeastern Interstate Forest Fire Protection Compact
Northeastern Forest Fire Protection Commission
Ogdensburg Bridge and Port Authority Compact
Ogdensburg Bridge Port Authority
Ohio River Valley River Water Sanitation Compact
Ohio River Valley Water Sanitation Commission
Palisades Interstate Park Compact
Palisades Interstate Park Commission
Susquehanna River Basin Compact
Susquehanna River Basin Commission
Tri-State Regional Planning Compact
Tri-State Regional Planning Commission
– dormant or defunct
Tri-State Sanitation Compact
Interstate Sanitation Commission
Vehicle Equipment Safety Compact
American Association of Motor Vehicle Administrators
Waterfront Commission Compact
Waterfront Commission of New York Harbor

Other agencies/officials authorized to enter interstate compacts or agreements
Milk Control – McKinney's Agriculture and Markets Law § 258-k, 258-n
Commissioner of Agriculture
Nonresidents (Mentally Disabled) – McKinney's Mental Hygiene Law § 67.05 – 1972
Commissioner of Department of Health

NORTH CAROLINA
Agreement on Detainers
Atlantic States Marine Fisheries Compact
Atlantic States Marine Fisheries Commission
Compact on Mental Health
Secretary of State

Interstate Agreement on Qualification of Educational Personnel
Superintendent of Public Instruction
Interstate Compact for the Supervision of Parolees and Probationers
Interstate Compact on Juveniles
Interstate Compact on the Placement of Children
Interstate Corrections Compact
Interstate Environmental Compact
– dormant or defunct
Interstate Library Compact
State Librarian
Interstate Mining Compact
Interstate Pest Control Compact
National Guard Mutual Assistance Compact
♦*Southeast Interstate Low-Level Radioactive Waste Management Compact*
Southeast Interstate Low-level Radioactive Waste Management Commission
Southeastern Interstate Forest Fire Protection Compact
Southeastern States Forest Fire Protection Compact Commission
Southern Growth Policies Agreement
Southern Growth Policies Board
Southern States Energy Compact
Southern States Energy Board
Vehicle Equipment Safety Compact
American Association of Motor Vehicle Administrators

NORTH DAKOTA
Compact for Education
Education Commission of the States
Compact on Mental Health
Executive Director, Department of Human Services
Interstate Agreement on Detainers
Attorney General
Interstate Compact for the Supervision of Out-of-State Parolees
Adult Compact Coordinator, Division of Parole and Probation, Department of Corrections
Interstate Compact on Juveniles
Juvenile Compact Coordinator, Division of Juvenile Services, Department of Corrections
Interstate Compact on Mentally Disordered Offenders
State Health Officer
Interstate Compact on the Placement of Children
Department of Human Services
Interstate Library Compact
State Librarian
Multistate Tax Compact
Multistate Tax Commission
♦*National Guard Mutual Assistance Counter-Drug Activities Compact*
Adjutant General
Pest Control Compact
Commissioner of Agriculture

•Southwestern Low-Level Radioactive Waste Disposal Compact
Southwestern Low-level Radioactive Waste Commission
•Tenneco Plant Impact Assistance Interstate Compact
Tenneco Plant Impact Assistance Interstate Compact Commission
– dormant or defunct
Yellowstone River Compact
Yellowstone River Compact Commission

Other agencies/officials authorized to enter interstate compacts or agreements
Higher Education Institutions, Nonresident students - NDCC 15-10-28, 15-10.1 to 15-10.05 – 1959
State Board of Higher Education - Authorizes the State Board of Higher Education to enter interstate agreements or regional education compacts waive out-of-state tuition charges to students of member states
Interstate Mutual Aid Agreement or Compact - NDCC 37-17.1-14.2 to 37-17.1-14.4 – 1991
Division of Emergency Management - Authorizes the governor to enter into agreements or compacts with other states to provides mutual aid in responding to any disaster or emergency.
Poor Relief - NDCC 50-06-11 – 1939
Department of Human Services - Authorizes the Department of Human Services to enter reciprocal agreements with other states regarding interstate residence, care and transportation of indigent people
Ports of Entry, Joint operation - NDCC 39-19-05 – 1983
Director, Department of Transportation - Authorizes the state highway commissioner to negotiate and enter bilateral agreements with other states for maintaining and operating jointly occupied ports of entry, collect highway user fees, registration fees, permit fees, fuel taxes and other fees and taxes
Unemployment Compensation - NDCC 52-02-15 – 193?
Job Service North Dakota - Directs Workers Compensation Bureau to enter reciprocal arrangements with other states to help administer appropriate unemployment compensation laws
Wage Collection - NDCC 34-14-11 to 34-14-13 – 1969
Commissioner of Labor - Authorizes the commissioner of labor to enter reciprocal agreements with other states to collect claims or judgements on wages assigned to the Department of Labor
Water Commission - NDCC 61-02-24, 61-02-25 – 1963
Water Commission - Authorizes the Water Commission to enter compacts with the federal government, states and Canadian provinces to inventory, plan, conserve or develop water resources of the state
Workers Compensation Jurisdiction - NDCC 65-08-04 – 196?
Workers Compensation Bureau - Authorizes the Workers Compensation Bureau to enter agreements with other states relating to conflicts of jurisdiction where the contractor of employment is in one state and the employee's injuries are received in another state

OHIO
Agreement on Detainers
Chief of the Adult Parole Authority, Department of Rehabilitation and Correction
Agreement on Qualification of Educational Personnel
Superintendent of Public Instruction
Bus Taxation Proration and Reciprocity Agreement
Registrar of Motor Vehicles
Compact for Education
Education Commission of the States
Driver License Compact
Registrar of Motor Vehicles
Great Lakes Basin Compact
Great Lakes Commission
International Registration Plan (IRP)
Registrar of Motor Vehicles
Interstate Compact for the Supervision of Parolees and Probationers
Deputy Administrator, Department of Interstate Compacts, Department of Rehabilitation and Correction
Interstate Compact on Juveniles
Compact Administrator, Department of Youth Services
Interstate Compact on Mental Health
Interstate Compact Coordinator, Department of Mental Health.
Director, Department of Mental Retardation and Developmental Disabilities
Interstate Compact on Placement of Children
Department of Human Services, Office of Child Care and Family Services
Interstate Corrections Compact
Director, Department of Rehabilitation and Correction
Interstate Fuel Tax Agreement
Am. H.B. 515, 120th Ohio General Assembly - Pending (1994)
Interstate High Speed Intercity Rail Passenger Network Compact
Interstate Rail Passenger Advisory Council, Chairman
Ohio High Speed Rail Authority
Interstate Library Compact
State Libranan
Interstate Mining Compact
Interstate Mining Compact Commission
Interstate Pest Control Compact
Chief, Division of Plant Industry, Plant Pest Control Section, Department of Agriculture
•Middle Atlantic Interstate Forest Fire Protection Compact
Fire and Law Coordinator, Division of Forestry, Department of Natural Resources

Midwest Interstate Low-Level Radioactive Waste Compact
Midwest Interstate Low-Level Radioactive Waste Commission
Midwestern Higher Education Compact
Midwestern Higher Education Commission
Nonresident Violator Compact of 1977
Director of Public Safety
Ohio River Valley Water Sanitation Compact
Ohio Valley Water Sanitation Commission
Pymatuning Lake Compact
Director, Department of Natural Resources
Vehicle Equipment Safety Compact
American Association of Motor Vehicle Administrators

Other agencies/officials authorized to enter interstate compacts or agreements

Auctioneers - RC 4707.12
The Department of Commerce can waive requirements for auctioneers from states with reciprocal licensing agreements.
Bridge Repair - RC 5501.44
Department of Transportation - Authorizes the Department of Transportation to enter agreements with other states to build, maintain or repair bridges crossing a stream that forms a boundary.
Cancer - RC 3701.263
Authorizes the Department of Health to release confidential information about cancer patients to the cancer registries of states with reciprocal agreements
Court of Claims - RC 2743.09
Authorizes the clerk of the court of claims to enter reciprocity agreements with other states
Drug Offenses - RC 4507.169
Department of Public Safety - Authorizes the Department of Public Safety to enter reciprocal or mutual agreements with other states to exchange information regarding people who plead guilty to or are convicted of drug offenses
Education - RC 3301.30
Department of Education - Directs the Department of Education to take steps regarding interstate programs for children of migrant laborers
Education Testing - RC 3301.0710
Department of Education - Enables the Department of Education to enter reciprocal agreements with other states regarding statewide proficiency tests.
Emergency Medical Services - RC 4765.10
Authorizes the State Board of Emergency Medical Services to enter reciprocal agreements with other states regarding emergency medical services training and certification
Emergency Planning - RC 3750.03
Emergency Response Commission - Authorizes the Emergency Response Commission to enter agreements with other states to establish joint interstate emergency planning districts.
Handicap License Plates and Parking - RC5502.03
Authorizes the director, department of public safety to enter reciprocity agreements with other states regarding handicapped license plates or parking cards.
Hunting and Fishing - RC 1533.10, 1533.323, 1533.352, 1533.91
Division of Wildlife - Authorizes the Division of Wildlife to enter reciprocal agreements with other states regarding non-resident hunting and fishing licenses
Motor Vehicle Licenses and Taxation - RC 4503.36, 4503.37
Ohio Reciprocity Board - Grants reciprocity certificates regarding registration, licensing and payment of motor vehicle taxes.
Nurseries - RC 927.56
Director, Department of Agriculture - Authorizes the director, department of agriculture to enter into reciprocal agreements with other states regarding the shipment and sale of nursery stock.
Occupational Licensing - RC 4757.10
Counselor and Social Worker Board - Authorizes the Counselor and Social Worker Board to enter agreements with any state that licenses, certifies, or registers counselors or social workers
Property - RC 125.89
Department of Administrative Services - Authorizes the Department of Administrative Services to enter into into contracts, compacts and cooperative agreements for the utilization and exchange of property, facilities, personnel and services
Public Assistance - RC 4981.08
Department of Human Services - Authorizes the Department of Human Services to enter reciprocal agreements regarding public assistance administration
Recycling - RC 125.022
Department of Administrative Services - Authorizes the Department of Administrative Services to enter into cooperative purchasing agreements with other states regarding recycled products
Unemployment Compensation - RC 4141.35
Bureau of Employment Services - Authorizes the Bureau of Employment Services to enter reciprocal agreements with other states to recover overpayment of unemployment benefits.
Unemployment Compensation - RC 4141.41-4141.43
Bureau of Employment Services - Authorizes the Bureau of Employment Services to enter reciprocal agreements with agencies that administer unemployment compensation in other states
Vocational Education - RC 3304.16, 3304.17
Rehabilitation Commission - Authorizes Rehabilitation Commission to enter reciprocal agreements with other states to provide vocational education
Welfare - RC 5101.181
State Auditor - Authorizes the State Auditor to enter

reciprocal agreements with other states to exchange information about people receiving public assistance.

OKLAHOMA

Agreement on Detainers
Assistant Attorney General, Office of the Attorney General
Agreement on Qualification of Educational Personnel
Director of Professional Stds., Department of Education
Arkansas River Basin Compact of 1970
Arkansas-Oklahoma Arkansas River Compact Commission
Canadian River Compact
Canadian River Commission
•*Central Interstate Low-level Radioactive Waste Compact*
Central Interstate Low-level Radioactive Waste Commission
Compact for Education
Education Commission of the States
•*Compact on Adoption and Medical Assistance*
Division of Children, Youth & Family Services, Department of Human Services
Driver License Compact
Director, Driver Improvement, Department of Public Safety
Interstate Compact for the Supervision of Parolees and Probationers
Administrator, Department of Corrections
Interstate Compact on Juveniles
Deputy Compact Administrator
Interstate Compact on Mental Health
Department of Mental Health and Substance Abuse Services
Interstate Compact on the Placement of Children
Deputy Compact Administrator, Division of Children, Youth & Family Services, Department of Human Services
Interstate Corrections Compact
Lexington Assessment & Reception Center, Department of Corrections
Interstate Library Compact (Interstate Compact for Library Services)
Director, Department of Libraries - Oklahoma is not active in this compact
Interstate Mining Compact
Interstate Mining Compact Commission
Interstate Oil and Gas Compact
Interstate Oil and Gas Compact Commission
Kansas-Oklahoma Arkansas River Basin Compact
Kansas-Oklahoma Arkansas River Commission
Nonresident Violator Compact
Division of Motor Vehicles, Oklahoma Tax Commission
Red River Compact
Red River Compact Commission
South Central Interstate Forest Fire Protection Compact
South Central States Forest Fire Protection Compact Commission, Assistant Compact Administrator, Forestry Division, Department of Agriculture
Southern Growth Policies Compact
Southern Growth Policies Board
Southern Interstate Energy Compact
Southern States Energy Board
Southern Regional Education Compact
Southern Regional Education Board

Other agencies/officials authorized to enter interstate compacts or agreements.

Motor Carriers - 47 O.S., §§ 1123 – 1985
Division of Motor Vehicles, Oklahoma Tax Commission - Authorizes the Oklahoma Tax Commission to enter reciprocal compacts and agreements concerning all motor vehicles engaged in foreign and interstate commerce.
Motor Vehicle Financial Responsibility - 47 O.S., § 7-404 – 1961
Director of Financial Responsibility, Department of Public Safety - Authorizes the Department of Public Safety to enter compacts and agreements with other states concerning financial responsibility as related to motor vehicles.
Water Resources Board - 82 O.S., § 1085.2 – 1993
Authorizes the Oklahoma Water Resources Board to negotiate contracts or compacts with the federal government or other states to obtain assistance and cooperation in flood control, and water conservation use in Oklahoma.

OREGON

Agreement on Detainers
•*Boating Offense Compact*
Oregon State Marine Board
Columbia River Compact (Oregon-Washington Columbia River Fish Compact)
•*Columbia River Gorge Compact*
Columbia River Gorge Commission
Compact on Mental Health
Mental Health and Developmental Disability Services Division, Human Resources Department
Driver License Compact
Administrator, Motor Vehicles Division, Department of Transportation
Interstate Compact for the Supervision of Parolees and Probationers
Department of Corrections
Interstate Compact on Juveniles
Assistant Director for Children's Services
Interstate Compact on Placement of Children
Child Welfare Programs Administrator
Interstate Corrections Compact
Department of Corrections

♦Interstate Forest Fire Suppression Compact
Director, Department of Corrections
Interstate Library Compact
State Librarian
Klamath River Compact
Klamath River Compact Commission
Multistate Highway Transportation Agreement - Although technically a member, Oregon does not actively participate in this compact.
Multistate Tax Compact
Multistate Tax Commission
♦Northwest Interstate Compact on Low-Level Radioactive Waste Management
Northwest Low-Level Waste Compact Committee
Oregon-California Goose Lake Interstate Compact
– dormant or defunct.
Oregon-Washington Columbia River Boundary Compact
Oregon-Washington Columbia River Fish Compact
State Fish and Wildlife Commission
Pacific Marine Fisheries Compact
Pacific Marine Fisheries Commission
♦Pacific Ocean Resources Compact
Pacific Ocean Resources Compact Organization Authority
♦Pacific States Agreement on Radioactive Materials Transportation Management
Pacific States Radioactive Materials Transportation Committee
Pest Control Compact (Interstate Pest Control Fund)
Director of Agriculture
Western Interstate Corrections Compact
Department of Corrections
Western Regional Higher Education Compact
Western Interstate Commission for Higher Education
Wildlife Violator Compact
Board of Compact Administrators; Oregon Department of Fish and Wildlife

Other agencies/officials authorized to enter interstate compacts or agreements.
Crime Prevention - ORS 131.685 – 1935
Governor - Authorizes the governor to enter into compacts or agreements with other states concerning crime prevention.
Interstate Emergency and Disaster Assistance Compact - ORS 401.045 – 1983
Governor - Authorizes and directs the governor to enter into compacts or agreements with other states concerning emergency and disaster assistance. Congressional consent is required. According to Oregon's Emergency Management Division, no other states have entered this compact with Oregon as of July, 1994.
Reciprocal Agreements and Interstate Compacts - ORS 802.500
Department of Transportation - Authorizes the Department of Transportation to enter interstate agreements and compacts to establish reciprocal registration privileges or exemptions for motor vehicles, traffic offenses, permits, fees and other rules.
Toxic Use and Hazardous Waste Reduction Programs - ORS 466.355 – 1989
Department of Environmental Quality - Directs the Department of Environmental Quality to work with representatives from Alaska, Idaho, and Washington to establish provisions to ensure that any generator disposing of hazardous waste or PCB at an Oregon facility has implemented a toxic use reduction and hazardous waste program equivalent to that required of Oregon generators.

PENNSYLVANIA
♦Appalachian States Low-Level Radioactive Waste Compact
Appalachian States Low-Level Radioactive Waste Commission
Atlantic States Marine Fisheries Compact
Atlantic States Marine Fisheries Commission
♦Brandywine River Valley Compact
Department of Environmental Resources
Compact for Education
Education Commission Of The States
Compact on Mental Health
Delaware River Basin Compact
Delaware River Basin Commission
*Delaware River Compact (of 1783) - revoked in part in 195**
Pennsylvania retains this compact for historical value only.
Delaware River Joint Toll Bridge Compact
Delaware River Joint Toll Bridge Commission
Delaware River Port Authority Compact
Delaware River Port Authority
Delaware Valley Urban Area Compact
Delaware Valley Regional Planning Commission
Great Lakes Basin Compact
Great Lakes Commission
Interpleader Compact
Department of state is authorized to act as a repository of documents; the governor is authorized to withdraw from the compact.
Interstate Agreement on Detainers
Department of Corrections; county jails
Interstate Agreement on Qualification of Educational Personnel
Department of Education
Interstate Civil Defense and Disaster Compact
Emergency Management Agency
Interstate Compacts Concerning Parole
Board of Probation and Parole
Interstate Compact on Juveniles
Department of Public Welfare

Interstate Compact on the Placement of Children
Department of Public Welfare
Interstate Compact to Conserve Oil and Gas
Interstate Oil and Gas Compact Commission
Interstate Corrections Compact
Department of Corrections
Interstate High Speed Intercity Rail Passenger Network Compact
High Speed Intercity Rail Passenger Commission
Interstate Mining Compact
Interstate Mining Compact Commission
Middle Atlantic Interstate Forest Fire Protection Compact
Department of Environmental Resources
Mutual Military Aid Compact
Adjutant General
New Jersey - Pennsylvania Turnpike Bridge Compact
Pennsylvania Turnpike Commission
Ohio River Valley Water Sanitation Compact
Ohio River Valley Water Sanitation Commission
Pest Control Compact
Department of Agriculture
Potomac Valley Conservancy District
Interstate Commission on the Potomac River Basin
Pymatuning Lake Compact
Department of Environmental Resources
Susquehanna River Basin Compact
Susquehanna River Basin Commission
Tri-State Agreement on the Chesapeake Bay
Chesapeake Bay Commission
Uniform Interstate Air Pollution Agreements Act
Department of Environmental Resources
-- dormant or defunct
Wheeling Creek Watershed Protection And Flood Prevention District Compact
Wheeling Creek Watershed Protection And Flood Prevention Commission

Other agencies/officials authorized to enter interstate compacts and agreements.

Interstate Agreements Records Act - 71 P.S. § 808.1 et seq -- 1963
Department of State - Requires the Department of State to maintain copies of all interstate agreements and compacts that to which Pennsylvania is a party.
Interstate Compact For Construction Of Dams and Reservoirs - 32 P.S. §§ 815.49 to 815.50 -- 1955
Department of Environmental Resources - Authorizes Pennsylvania to construct and maintain one or more dams and reservoirs across the Delaware River between New Jersey and Pennsylvania.
Milk Compact - Pennsylvania 31 P.S. § 700j-311 -- 1947
Milk Marketing Board - Authorizes the Milk Marketing Board to enter into compacts to regulate the production, supply and price of milk from the signatory states to markets in New York City and surrounding counties.
Reciprocal Use Tax Collection - 72 P.S. § 7276 -- 1971
Allows the governor to conduct joint investigations or hearings, or enter into compacts or interstate agreements to accomplish uniform, reciprocal tax collections.

RHODE ISLAND

Agreement on Qualifications of Educational Personnel
Department of Elementary and Secondary Education
Atlantic States Marine Fisheries Compact
Atlantic States Marine Fisheries Commission
♦*Bay State-Ocean State Compact*
Bay State-Ocean State Commission
♦*Bus Taxation Proration and Reciprocity Agreement*
Assistant Director For Motor Vehicles, Department of Transportation
♦*Compact for Pension Portability for Educators*
Commissioner of Education
Compact for Education
Department of Education
Interstate Agreement on Qualifications of Teachers
Department of Education
Interstate Agreement on Detainers
Commissioner of Corrections
Interstate Civil Defense and Disaster Compact
Defense Civil Preparedness Advisory Council
♦*Interstate Compact on Adoption and Medical Assistance*
Director, Children, Youth and Families
♦*Interstate Compact on Industrialized Modular Building*
Interstate Industrialized Modular Buildings Commission
Interstate Compact on Juveniles
Juvenile Compact Administrator
Interstate Compact on the Placement of Children
Department of Human Services
Interstate Library Compact
Director, Department of State Library Services
Interstate Oil and Gas Compact (Oil Pollution Control
Interstate Oil and Gas Compact Commission
♦*Low-Level Radioactive Waste Compact*
Health Department
New England Board of Health Services and Facilities
Department of Health
-- dormant or defunct
New England Compact on Radiological Health Protection
Department of Health
New England Higher Education Compact
New England Board of Higher Education
New England Interstate Corrections Compact
Director of Corrections
New England Interstate Planning Compact
-- dormant or defunct
New England Interstate Water Pollution Control Compact
New England Interstate Water Pollution Control Commission
New England State Police Compact
Superintendent of State Police
New England Welfare Compact

Director, Department of Human Services
– dormant or defunct
Northeastern Interstate Forest Fire Protection Compact
Northeastern Forest Fire Protection Commission
Northeastern Water and Land Resources Compact (Interstate Compact for Protection Of Resources)
Northeastern Resources Commission
– dormant or defunct
Vehicle Equipment Safety Compact
American Association of Motor Vehicle Administrators

Other agencies/officials authorized to enter interstate compacts or agreements.
Interlocal Contracting and Joint Enterprises - Gen.Laws 1956, §45-40.1-5 – 1990
Authorizes Rhode Island state agencies and political subdivisions to act jointly with other states' agencies or political subdivisions when it is mutually beneficial Primarily aimed at local governments
Reciprocity Agreements – Gen.Laws 1956, §§31-29-1 to 31-29-4 – 1949
Registrar of Motor Vehicles - Authorizes the governor to enter reciprocal agreements with respect to fees and taxes imposed on motor vehicles

SOUTH CAROLINA
Atlantic States Marine Fisheries Compact
Atlantic States Marine Fisheries Commission
Compact for Education
Education Commission of The States
Driver License Compact
Interstate Agreement on Detainers
Central Administration and Information Agent
Interstate Agreement on Qualifications of Educational Personnel
Superintendent of Education
Interstate Civil Defense and Disaster Compact
Emergency Preparedness Division, Office of the Adjutant General
♦*Interstate Compact for Adoption and Medical Assistance*
Department of Social Services
Interstate Compact on Juveniles
Department of Youth Services
Interstate Compact on Mental Health
State Commissioners of Mental Health and Mental Retardation
Interstate Compact on the Placement of Children
Department of Youth Services
Interstate Compact to Conserve Oil and Gas
Interstate Oil and Gas Compact Commission
Interstate Corrections Compact
Commissioner, Department of Corrections
Interstate Mining Compact
Interstate Mining Compact Commission
Pest Control Compact
Commissioner of Agriculture

♦*Southeast Interstate Low-Level Radioactive Waste Management Compact*
Southeast Interstate Low-Level Radioactive Waste Management Commission
Southeastern Interstate Forest Fire Protection Compact
Southeastern States Forest Fire Compact Commission
Southern Growth Policies Compact
Southern Growth Policies Board
Southern Interstate Energy Compact (formerly Southern Interstate Nuclear Compact)
Southern States Energy Board

Other agencies/officials authorized to enter interstate compacts or agreements
Pollution Control Compacts - Code 1976, § 48-1-30
Department of Health and Environmental Control - Authorizes the Department of Health and Environmental Control to enter into compacts with other states that promote health and the environment

SOUTH DAKOTA
Belle Fourche River Compact
Department of Environment and Natural Resources
Driver License Compact
Secretary of Commerce and Regulation
Interstate Agreement on Detainers
Attorney General
Interstate Agreement on Qualifications of Educational Personnel
Secretary of the Department Of Education and Cultural Affairs
Interstate Compact for the Supervision of Parolees and Probationers
Department of Corrections
Interstate Compact on Juveniles
Director of Court Services
Interstate Compact on Placement of Children
Department of Social Services
Interstate Compact to Conserve Oil and Gas
Interstate Oil and Gas Compact Commission
Interstate Library Compact
State Librarian
Multistate Tax Compact
Multistate Tax Commission
National Guard Mutual Assistance Compact
Adjutant General
Nonresident Violators Compact
Secretary of Commerce and Regulation
South Dakota-Nebraska Boundary Compact
Office of the Governor
♦*Southwestern Low-Level Radioactive Waste Disposal Compact*
Southwestern Low-Level Radioactive Waste Disposal Commission
The Interstate Compact on Mental Health
Secretary of Human Services

Other agencies/officials authorized to enter interstate compacts or agreements

Adoption And Medical Assistance - SDCL §§25-6A-3 to 25-6A-14, inclusive
Secretary, Department of Social Services - Authorizes the secretary of the department of social services to enter into interstate compacts on adoption or medical assistance. Supersedes the *Interstate Compact on Adoption and Medical Assistance* which was repealed in 1990.

Hunting, Fishing, Trapping and Boating on Boundary Waters - SDCL §41-8-40 authorization 1917, revised 1967
Department of Game, Fish and Parks - Authorizes the Department of Game, Fish and Parks to enter reciprocal agreements with bordering states regarding licenses, permits and reciprocal enforcement of regulations pertaining to hunting, fishing, trapping and boating regulation on boundary waters. South Dakota currently maintains agreements with Minnesota and Nebraska.

Interstate Agreements For Administration Of Excise And Income Taxes - SDCL § 10-1-13.1 – 1971
Secretary of Revenue - Authorizes the secretary of revenue to enter agreements with other states for reciprocal collection of excise and income taxes.

TENNESSEE

Civil Defense and Disaster Compact
Director, Emergency Management Agency

Compact for Education
Education Commission of the States

Compact for Out-of-State Supervision of Parolees
Executive Director, Board of Pardons and Paroles

Driver License Compact
Commissioner of Safety

•*Interstate Compact on Adoption and Medical Assistance*
Commissioner of Human Services

Interstate Compact on Detainers
Commissioner of Corrections

Interstate Compact on Juveniles
Commissioner of Youth Development

Interstate Compact on Mental Health
Commissioner of Mental Health and Mental Retardation

Interstate Compact on the Placement of Children
Commissioner of Human Services

Interstate Corrections Compact
Commissioner of Corrections

•*Interstate Earthquake Emergency Compact (Interstate Earthquake Compact of 1988)*
Director, Emergency Management Agency

Interstate Library Compact
State Library and Archives

•*Interstate Rail Passenger Network Compact*
Interstate Rail Passenger Advisory Council

Pest Control Compact
Commissioner of Agriculture

Southeast Interstate Low-Level Radioactive Waste Compact
Southeast Interstate Low-Level Radioactive Waste Management Commission

Southeastern Interstate Forest Fire Protection Compact
Southeastern State Forest Fire Compact Commission

Southern Growth Policies Compact (Southern Growth Policies Agreement)
Southern Growth Policies Board

Southern Interstate Energy Compact (Southern States Nuclear Compact)
Southern States Energy Board

Southern Regional Education Compact
Southern Regional Education Board

•*Tennessee Interstate Furlough Compact*
Commissioner of Corrections - Establishes procedures to govern interstate furloughs of prisoners. This language is similar but not identical to the Interstate Furlough Compact that was drafted in 1977 by The Council of State Governments. So far, no other state has joined with Tennessee under this compact.

Tennessee-Tombigbee Waterway Development Compact
Tombigbee-Tennessee Waterway Development Authority

Other agencies/officials authorized to enter interstate compacts or agreements.

Hazardous Waste Management Interstate Agreements - T.C.A. §§68-212-119 – 1989
Governor - Authorizes governor to enter agreements governing importing/exporting hazardous waste as may be required by the Comprehensive Environmental Response Compensation and Liability Act, sec. 104(c)(9) codified at 42 U.S.C. Sec. 9604(c)(9).

Interlocal Cooperation Act - T.C.A. §12-9-101 to 12-9-109 – 1967
Prescribes that agreements between Tennessee state agencies and other states' or federal agencies shall have the status of an interstate compact.

Sequatchie Valley Planning And Development Agency - T.C.A. §64-1-503 – 1968
Authorizes the Sequatchie Valley Planning and Development Agency to enter compacts with adjoining or neighboring states to prepare comprehensive, regional development plans.

TEXAS

Agreement on Detainers (Interstate)
State Administrator, Department of Criminal Justice

Caddo Lake Compact
– dormant or defunct

Canadian River Compact
Interstate Stream Commission

Compact for Education
Education Commission of the States

Driver's License Compact of 1993
Assistant Chief of Administration, Drivers' and Vehicle

Records Division, Department of Public Safety
Gulf States Marine Fisheries Compact
Gulf States Marine Fisheries Commission
Interstate Adult Probation and Parole Compact
Compact Administrator, Department of Criminal Justice
Interstate Compact on the Placement of Children
Compact Administrator, Department of Protective and Regulatory Services
Interstate Compact on Juveniles
Interstate Compact on Mental Health
Commissioner, Department of Mental Health and Mental Retardation
Interstate Compact to Conserve Oil and Gas
Interstate Oil and Gas Compact Commission
Interstate Corrections Compact
Director, Department of Criminal Justice
Interstate Energy and Water Resources Compact
Would create an Interstate Natural Energy and Water Resources Commission to administer the compact. In addition to the purposes implicit in the title, the compact would promote comity among member states, foster the development of agriculture and industry, and establish a priority for the exchange of natural energy and water resources among the jurisdictions party to the compact. Arkansas, Louisiana, New Mexico, Oklahoma, and Texas are eligible. Compact takes effect upon ratification by three states. To date, only Texas has ratified. The compact stipulates that congressional consent is not required.
Interstate Mining Compact
Interstate Mining Commission
Multistate Tax Compact
Multistate Tax Commission
Natural Energy and Water Resources Compact
Interstate Natural Energy and Water Resources Commission
-- dormant or defunct
Nonresident Violator Compact (of 19"",
Assistant Chief of Administration, Driver's and Vehicle Records
Pecos River Compact
Pecos River Commission
Red River Compact
Red River Compact Commission, Executive Director, Texas Natural Resource Conservation Commission
Rio Grande Compact
Rio Grande Compact Commission
Sabine River Compact
Sabine River Compact Administration
South Central Interstate Forest Fire Protection Compact
South Central States Forest Fire Protection Compact Commission, Director, Texas Forest Service, Texas A&M University
Southern Regional Education Compact
Southern Regional Education Board
Southern States Energy Compact
Southern States Energy Board
+Texas Low-Level Radioactive Waste Disposal Compact
Texas Low-Level Radioactive Waste Disposal Compact Commission; Texas Low-Level Radioactive Waste Disposal Authority - As of March 1994, Maine and Texas have ratified this compact. Vermont and the U.S. Congress have not. The commission will be headquartered in Austin, but the commission members have not yet been appointed, nor had an address been designated.

Other agencies/officials authorized to enter interstate compacts or agreements.
Multi-state Water Resources Planning Commission - V.T.C.A., Water Code § 8.056 -- 1985
Texas Multi-state Water Resources Planning Commission - Creates a commission to contact and negotiate with other states the need to establish compacts concerning groundwater, aquifer and water conservation. As of March, 1994 the commission was inactive.
Oil Spill and Response Act of 1991 - V.T.C.A., Natural Resources Code § 40.301 -- 1991 Commissioner of Land Resources, Deputy Commissioner for Oil Spill Prevention and Response - Authorizes the commissioner of land resources to enter compacts or agreements to develop multistate and international standards for preventing and cleaning-up oil spills. As of 1994, the five eligible states (Alabama, Florida, Louisiana, Mississippi, Texas) have an informal working group, but no compact or agreement.
Recycled Products-Purchasing - Vernon's Ann. Civ. St. art. 601b, § 11.0" -- 1994
Purchaser, General Services Commission - Directs the General Services Commission to enter into compacts and agreements with other states to procure recycled products. The commission will begin considering the directive in 1994.

Other intergovernmental compacts or agreements
United Mexican States - V.T.C.A., Government Code § 481.061 -- 1991
Texas-Mexico Authority - Authorizes the Texas-Mexico Authority to enter compacts with the United Mexican states concerning trade and infrastructure. No compacts have been negotiated.

UTAH
Bear River Compact -
Bear River Commission
Civil Defense and Disaster Compact
Division of Comprehensive Emergency Management, Department of Public Safety
Colorado River Compact
Columbia Interstate Compact
Columbia Compact Commission, Director, Utah

Division of Water Resources
– dormant or defunct
Compact for Education
Education Commission of The States
Agreement on Qualification of Educational Personnel (Compact for Interstate Qualification of Educational Personnel)
Superintendent of Public Instruction
Drivers' License Compact
Department of Public Safety
Furlough Compact
Interstate Agreement on Detainers
Director, Field Operations, Department of Corrections
Interstate Compact for the Supervision of Out-of-State Parolees and Probationers
Director, Field Operations, Department of Corrections
Interstate Compact on Juveniles
Administrator, Utah State Juvenile Court
Interstate Compact on Low-Level Radioactive Waste (Northwest)
Northwest Low-Level Waste Radioactive Waste Compact Committee
Interstate Compact on Mental Health
Mental Health Division, Human Services Department
Interstate Compact on Placement of Children
Executive Director, Division of Family Services
Interstate Compact to Conserve Oil and Gas
Interstate Oil and Gas Compact Commission
Interstate Corrections Compact
Director, Field Operations, Department of Corrections
Multistate Highway Transportation Agreement
Cooperating Committee
Multistate Tax Compact
Multistate Tax Commission
Nonresident Violator Compact
American Association of Motor Vehicle Administrators
Pest Control Compact
Commissioner, Department of Agriculture
Upper Colorado River Basin Compact
Upper Colorado River Basin Commission
Vehicle Equipment Safety Compact
American Association of Motor Vehicle Administrators
Utah Department of Transportation
Western Interstate Corrections Compact
Director, Field Operations, Department of Corrections
Western Interstate Nuclear Compact
Western Interstate Nuclear Board
Compact for Western Regional Cooperation-Interstate Commission for Higher Education
Western Interstate Commission For Higher Education
Wildlife Violator Compact
Board of Compact Administrators, Utah Division of Wildlife Resources

Other agencies/officials authorized to enter interstate compacts or agreements

Adoption Assistance Agreements - U.C.A. 1953, 62A-4-115 – 1988
Division of Family Services -Authorizes the Division of Family Services to develop and negotiate compacts with other states to provide medical identification and assistance to adoptive parents who receive adoption assistance. Pursuant to the *Adoption Assistance And Child Welfare Act of 1980*, Title IV (e) of the Social Security Act, and Title XIX of the Social Security Act

Board of Water Resources - U.C.A. 1953, 73-10-3 – 1941
Utah Board of Water Resources - Authorizes the Board of Water Resources to enter compacts with other states concerning apportioning interstate river waters and water supplies.

Interstate Fuel Tax Agreements - U.C.A. 1953, 59-13-502 – 1980
Utah Tax Review Commission - Authorizes the Tax Review Commission to enter agreements with other states to exchange information and audits of motor fuel use by interstate fleets.

Uniform Unclaimed Property Act - U.C.A. 1953, 78-44-1 to 78-44-40 – 1983
Deputy State Treasurer - Authorizes the deputy state treasurer to enter agreements with other states to establish rules for entitlement to take property in cases where multiple state claims are possible

Other intergovernmental compacts or agreements.

Ute Indian Water Compact - U.C.A. 1953, 73-21-1, 73-21-2 [1980]

VERMONT

Connecticut River Atlantic Salmon Act
Connecticut River Atlantic Salmon Commission
Connecticut River Valley Flood Control Compact
Connecticut River Valley Flood Control Commission
Driver Licensе Compact
Commissioner of the Department of Motor Vehicles
International Registration Plan
Commissioner of Motor Vehicles
Interstate Agreement on Detainers
Commissioner of Corrections
Interstate Agreement on Qualification of Educational Personnel
Commissioner of Education
Interstate Civil Defense Compact
Interstate Compact for Education
Education Commission of The States
Interstate Compact for Motor Vehicle Safety Equipment
American Association of Motor Vehicle Administrators
Interstate Compact on the Placement of Children
Interstate Compact on Juveniles
Interstate Compact on Mental Health

Commissioner of Mental Health and Mental Retardation
Interstate Compact to Conserve Oil and Natural Gas
Interstate Oil and Gas Compact Commission
Interstate Corrections Compact
Commissioner of Corrections
Interstate Library Compact
Pest Control Compact (Interstate)
Department of Agriculture
Mutual Military Aid Compact
Governor
New England Compact on Radiological Health Protection
Commissioner of Health
New England Higher Education Compact
New England Board of Higher Education
New England Interstate Corrections Compact
Commissioner of Corrections
New England Interstate Water Pollution Control Compact
New England Interstate Water Pollution Control Commission
New England State Police Compact
Commissioner of Public Safety
•*New Hampshire-Vermont Solid Waste Compact*
Solid Waste Agency
New Hampshire-Vermont Interstate School Compact (Hanover-Norwich District)
Hanover-Norwich School Board
New Hampshire-Vermont Interstate School Compact
Commissioner of Education
New Hampshire-Vermont Interstate Sewage and Waste Disposal Facilities Compact
Department of Water Resources and Environmental Engineering
•*New York-Vermont Interstate School Compact*
Commissioner of Education
Nonresident Violator Compact
American Association of Motor Vehicle Administrators
•*Northeast Interstate Compact for Dairy Pricing*
Northeastern Forest Fire Protection Compact
Northeastern Forest Fire Protection Commission
Texas Low-Level Radioactive Waste Disposal Compact -- legislation pending February, 1995
Texas Low-Level Radioactive Waste Disposal Authority
Tri-State Lotto Compact
Tri-State Lotto Commission
Uniform Act for Out-of-State Supervision of Parolees and Probationers

Other agencies/officials authorized to enter interstate compacts or agreements.

Interstate Compact on Uniform Truck Annual User License Fee - V.S.A. 23 § 423
Secretary of Transportation - Directs the secretary of transportation to negotiate compacts or agreements to set uniform annual truck user license fees and common identification tags or decals for motor trucks operating in the eligible states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island)

VIRGINIA

Agreement on Detainers
Office of Attorney General
Atlantic States Marine Fisheries Compact
Atlantic States Marine Fisheries Commission
Breaks Interstate Park Compact Of 1954
Breaks Interstate Park Commission
Compact for Education
Education Commission of The States
Cumberland Gap National Park Compact
U.S. Forest Services; Chairman, VA Conservation Commission
Delmarva Advisory Council Agreement
Delmarva Advisory Council
Driver License Compact
Commissioner, Department of Motor Vehicles
Interstate Agreement on Qualification of Educational Personnel
Division Chief of Compliance Coordination, Department of Education
Interstate Civil Defense Compact of 1952
Governor
Interstate Compact on Juveniles
Acting Compact Administrator, Department of Youth and Family Services
Interstate Compact on the Placement of Children
Commissioner of Social Services
Interstate Compact to Conserve Oil and Gas
Interstate Oil and Gas Compact Commission
Interstate Corrections Compact
Deputy Director, Department of Corrections
Interstate Library Compact
Interstate Mining Compact
Interstate Mining Compact Commission
Maryland-Virginia Compact of 1785
Middle Atlantic Interstate Forest Fire Protection Compact
Head, Fire Management, Department of Forestry
National Guard Mutual Assistance Compact
Adjutant General
Ohio River Valley Water Sanitation Compact
Ohio River Valley Sanitation Commission
Pest Control Compact
Commissioner of Agriculture and Consumer Affairs
Potomac River Compact of 1958 and Potomac River Fisheries Commission - This compact superseded the *Maryland-Virginia Compact of 1785*
Potomac River Fisheries Commission
Potomac Valley Conservancy District (Potomac River Basin Interstate Compact of 1940)
Interstate Commission on the Potomac River Basin
•*Southeast Interstate Low-Level Radioactive Waste Management Compact*
Southeast Interstate Low-Level Radioactive Waste

Management Commission
Southeastern Interstate Forest Fire Protection Compact
Southeastern States Forest Fire Protection Compact Commission
Southern Growth Policies Agreement
Southern Growth Policies Board
Southern Regional Education Compact
Southern Regional Education Board
Southern States Energy Compact
Southern States Energy Board
Uniform Act for Out-of-State Parolee Supervision
Chairman, Parole Board
♦*Uniform Act on Adoption and Medical Assistance*
Human Services Program Consultant, Department of Social Services
Virginia and West Virginia Boundary Agreement of 1863 - Cedes three counties from Virginia into West Virginia.
Virginia and West Virginia Boundary Compact of 1959 - Set boundary line between Allegheny County, Virginia and Monroe County, West Virginia.
Virginia-District of Columbia Boundary Line Compact of 1946
Virginia-Kentucky Boundary
Virginia-Maryland Boundary Compact of 1878
Virginia-North Carolina Boundary Agreement of 1791
Virginia-North Carolina Boundary Agreement of 1970 - 1970 Acts of Assembly, Ch. 343, p.578 -- 1970
Resolves questions about exact location of boundary between the eastern portions of the two states.
Virginia-Tennessee Boundary Agreement(s)
Washington Metropolitan Area Transit Authority Compact
Washington Metropolitan Area Transit Authority
Washington Metropolitan Area Transit Regulation Compact
Washington Metropolitan Area Transit Commission
Chesapeake Bay Commission (Tri-State Agreement on the Chesapeake Bay)
Chesapeake Bay Commission

WASHINGTON
Abandoned or Unclaimed Property Act
Department of Revenue
Agreement on Detainers
♦*Boating Offense Compact*
Columbia River Compact
-- dormant or defunct
♦*Columbia River Gorge Compact*
Columbia River Gorge Commission
Compact for Education
Education Commission of The States
Compact on Mental Health
Secretary of Social and Health Services
Driver License Compact
Department of Licensing
Interstate Agreement on Qualifications of Educational Personnel
Superintendent of Public Instruction
Interstate Civil Defense and Disaster Compact
Director of Civil Defense (Emergency Services)
♦*Interstate Compact for School Bus Safety*
Western States School Bus Commission; WA Secretary of Transportation, Superintendent of Public Instruction, Chief, WA State Patrol
Interstate Compact on Juveniles
Interstate Compact on Placement of Children
Division of Children & Family Services, Department of Social and Health Services
Interstate Corrections Compact
Secretary, Department of Corrections
♦*Interstate Forest Fire Suppression Compact*
Interstate Library Compact
State Librarian
Interstate Mutual Aid Compact
Emergency Management Division, Department of Emergency Services
Multistate Highway Transportation Agreement
Multistate Tax Compact
Multistate Tax Commission
♦*National Guard Mutual Assistance Counter-Drug Activities Compact*
Adjutant General
Nonresident Violator Compact
Department of Licensing
♦*Northwest Interstate Compact on Low-Level Radioactive Waste Management*
Northwest Interstate Low-Level Radioactive Waste Management Committee
Pacific Marine Fisheries Compact
Pacific Marine Fisheries Commission
Pest Control Compact
Director of Agriculture
Vehicle Equipment Safety Compact
American Association of Motor Vehicle Administrators
Washington-Oregon Boundary Compact
Western Interstate Corrections Compact
Secretary, Department of Corrections
Western Interstate Nuclear Compact
Western Interstate Energy Board
Western Regional Higher Education Compact
Western Interstate Commission For Higher Education
Western Regional Short-Haul Air Transportation Compact
-- dormant or defunct
♦*Wildlife Violator Compact*
Board of Compact Administrators, WA Department of Fish and Wildlife

Other agencies/authorities authorized to enter interstate compacts or agreements.
Columbia River Bridge, Oregon - RCW 47.56.330 -- 1961
Authorizes the Washington State Highway Commission and Washington Toll Bridge Authority to enter into an

interstate agreement with the Oregon Highway Commission to build a bridge over the Columbia River and reconstruct an existing bridge over the Columbia river.

Military Forces - Boundaries, Guarding - RCW 38.08.100 – 1951
Governor - Authorizes the governor to enter compacts or agreements with governors of bordering states concerning guarding and patrol of bridges crossing the common boundaries of those states, and to patrol the boundaries of the states. Permits governor to send the militia into bordering states regarding the above.

Multistate Motor Fuel Tax Agreement - Washington RCW 82.41.010 et seq. – 1982
Authorizes the Department of Licensing to participate in a multistate motor fuel tax agreement to simplify motor fuel use tax licensing, reporting and remittance requirements imposed on motor carriers involved in interstate commerce.

Washington State Milk Pooling Act - RCW 15.35.090 - 1971
Director, Department of Agriculture - Authorizes the director of the Department of Agriculture to enter into compacts or agreements with other states or federal agencies to control milk prices.

Other intergovernmental compacts or agreements

Pacific Northwest Economic Region Agreement - RCW 43.147.010 et seq. – 1991
Pacific Northwest Economic Region Delegate Council

WEST VIRGINIA

Agreement on Detainers
Commissioner of Corrections
•Appalachian States Low-Level Radioactive Waste Compact
Appalachian States Low-Level Radioactive Waste Commission
Compact for Education
Education Commission of The States
Driver License Compact
Department of Motor Vehicles
•Interstate Adoption Assistance Compact
Department of Human Services
Interstate Civil Defense and Disaster Compact
Secretary of Public Safety and Military Affairs
Interstate Compact on Juveniles
Commissioner of Corrections
Interstate Compact on Mental Health
Director of Health
Interstate Compact on Qualification of Educational Personnel
State Superintendent of Schools
Interstate Compact on the Placement of Children
Department of Human Services
Interstate Library Compact
West Virginia Library Commission
Interstate Mining Compact
Interstate Mining Compact Commission
Interstate Pest Control Compact (Interstate Compact on Pest Control)
Commissioner of Agriculture
•Jennings Randolph Lake Project Compact
United States Army Corps of Engineers, West Virginia Division of Natural Resources
Mentally Disordered Offender Compact
Commissioner of Corrections
Middle Atlantic Interstate Forest Fire Protection Compact
State Forester
Nonresident Violator Compact
Commissioner, Department of Motor Vehicles
Ohio River Valley Water Sanitation Commission
Ohio River Valley Water Sanitation Commission
Potomac Valley Compact (Interstate Commission on the Potomac River Basin)
Interstate Commission on the Potomac River Basin
Potomac Highlands Airport Authority Compact
This compact creates an authority to operate a regional airport between counties in Maryland and West Virginia. The compact was dormant until 1990 when state and local officials in both states signed an agreement to activate it.
Southeastern Interstate Forest Fire Protection Compact
Southeastern States Forest Fire Protection Compact Commission
Southern Regional Education Compact
Southern Regional Education Board
Southern States Energy Compact
Southern States Energy Board
Uniform Act for Out-of-State Parolee Supervision
Division of Corrections
Wheeling Creek Watershed Protection and Flood Prevention Compact
Wheeling Creek Watershed Protection And Flood Prevention Commission
•Interstate Wildlife Violator Compact
Appointed by Director, Department of Natural Resources

Other agencies/officials authorized to enter interstate compacts or agreements.

Unemployment Compensation - Code. §21A-2-6a – 1936
Commissioner of Employment Programs - Authorizes the commissioner of employment programs to enter reciprocal agreements with other states concerning unemployment compensation claims.

Water Pollution Control Act - Code. §22-11-4 – 1994
Director, Division of Environmental Protection - Authorizes the director of the division of environmental protection to cooperate with interstate agencies for the purpose of submitting to the Legislature, interstate compacts and agreements relating to controlling and reducing water pollution, and the state's share of water-

in watercourses and bordering the state.

WISCONSIN

Agreement on Detainers
Secretary of Corrections

Compact for Education
Education Commission of the States

Great Lakes Basin Compact
Great Lakes Commission

Interstate Agreement on Qualification of Educational Personnel
Department of Public Instruction

Interstate Compact for Supervision of Parolees and Probationers
Department of Corrections

Interstate Compact on Adoption and Medical Assistance
Department of Health and Social Services

Interstate Compact on Juveniles
Division of Youth Services, Department of Health and Social Services

Interstate Compact on Mental Health
Secretary of Health and Social Services

Interstate Compact on Placement of Children
Division of Community Services, Department of Health and Social Services

Interstate Corrections Compact
Secretary of Corrections

Midwest Interstate Low-Level Radioactive Waste Compact
Midwest Interstate Low-Level Radioactive Waste Commission

Midwestern Higher Education Compact
Midwestern Higher Education Commission

Minnesota-Wisconsin Boundary Area Compact
Minnesota-Wisconsin Boundary Area Commission

Other agencies/officials authorized to enter interstate compacts or agreements.

Interstate Compacts - Generally - W.S.A. 14.76 – 1953
Grants Wisconsin state agencies general authority to enter compacts with agencies in other states.

Interstate Contracts for Mental Health Services - W.S.A. 51.87 – 1984
Department of Health and Social Services - Allows county Departments of Developmental Disabilities to contract with bordering state agencies to treat Wisconsin residents who are mentally ill, if the treatment can be provided closer to the patient's home than they would receive from a Wisconsin facility.

Minnesota-Wisconsin Student Reciprocity Agreement - W.S.A. 39.47 [1973]
Wisconsin Higher Educational Aids Board – Waives nonresident tuition for a resident of either state who is enrolled in a public vocational school located in the other state.

Other intergovernmental compacts or agreements

Great Lakes Protection Fund - W.S.A. 14.84 – 1989
Great Lakes Protection Fund - Creates a Fund and managing board among Illinois, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin to finance projects that protect and cleaning up the Great Lakes.

Lower St. Croix Management Commission - 1973
Director, Minnesota-Wisconsin Boundary Area Commission
Provides a forum for discussing problems and programs associated with the Lower St. Croix Scenic Riverway.

Mississippi River Parkway Commission - Wisconsin W.S.A. 14.85 [1961]
Mississippi River Parkway Commission

Upper Mississippi River Basin Association - Executive Order 35, Oct. 27, 1983 Upper Mississippi River Basin Association - A non-profit organization with membership from Illinois, Iowa, Minnesota, Missouri, Wisconsin that facilitates cooperative actions regarding the water and land resources in the Upper Mississippi River Basin.

WYOMING

Bear River Compact
Bear River Commission

Belle Fourche River Compact

Colorado River Compact
State Engineer

Driver License Compact
Department of Transportation

Interstate Agreement on Detainers
Attorney General

Interstate Compact for Arrest of Fugitives and Attendance of Witnesses
Supervisor of Interstate Matters, Department of Corrections - Grants police officers the authority to pursue and subsequently arrest felons who flee across the borders of the compacting states (originally reported as Colorado, Ohio, Kansas, New Mexico, Wyoming). Instructs the courts in each compacting state to recognize subpoenas, summons or court orders to witnesses as being issued in the state where the witness is found.
– dormant in Wyoming.

Interstate Compact for Education
Education Commission Of The States

Interstate Compact for Supervision of Parolees and Probationers
Supervisor of Interstate Matters, Department of Corrections

Interstate Compact on Juveniles
Division of Youth, Department of Family Services

Interstate Compact on Mental Health
Director, Department of Health

Interstate Compact on Placement of Children

Deputy Administrator, Division of Youth Services, Department of Family Services
Interstate Compact on the Conservation of Oil and Gas
Interstate Oil and Gas Commission
Interstate Library Compact
State Librarian
– dormant in Wyoming
Interstate Mining Compact
Interstate Mining Compact Commission
Multistate Highway Transportation Agreement
Department of Transportation
♦*Northwest Interstate Compact on Low-Level Radioactive Waste Management*
Northwest Interstate Low-Level Waste Compact Committee
♦*Pacific States Agreement on Radioactive Material Transportation Management*
Pacific States Radioactive Materials Transportation Committee
Snake River Compact
State Engineer
♦*The Interstate Compact on Agricultural Grain Marketing*
Interstate Grain Marketing Commission
Upper Colorado River Basin Compact
Upper Colorado River Commission
Upper Niobrara River Compact
Interstate Streams Commissioner
Western Interstate Corrections Compact
Attorney General
Western Interstate Nuclear Cooperation Compact
Western Interstate Energy Board
Western Regional Higher Education Compact
Western Interstate Commission For Higher Education
Yellowstone River Compact
State Engineer

Other agencies/officials authorized to enter interstate compacts or agreements
Black Hills Joint Power Commission – Wyoming W.S §§37-7-301 to 37-7-311 – 1935
Establishes a commission to promote and develop electrical energy in the Black Hills Power District.
Interstate Streams Commission - W.S. §41-11-201 – 1957
State Engineer – Establishes a commission to negotiate agreements with other states and the federal government to apportion waters from streams running into and out of Wyoming. The Commission may be dormant or defunct

DISTRICT OF COLUMBIA
Compact for Education (Compact for Education Commission of the States)
Education Commission of the States
Driver License Compact
Interstate Agreement on Detainers
Interstate Agreement on the Qualification of Educational Personnel
Superintendent of Schools
Interstate Compact on Juveniles
Family Services Administration
Interstate Compact on Mental Health
Mental Health Division
Interstate Compact on the Placement of Children
Interstate Compact Unit, Commission on Social Services, Family Services Administration, Department of Human Services
Interstate Corrections Compact
Interstate Parole and Probation Compact
Multistate Tax Compact
Multistate Tax Commission
Potomac Valley Conservancy District Compact
Interstate Commission on The Potomac River Basin
Washington Metropolitan Area Transit Authority Compact
Washington Metropolitan Transit Authority
Washington Metropolitan Area Transit Regulation Compact (Mass Transportation Compact)
Washington Metropolitan Transit Commission

Other agencies/officials authorized to enter interstate compacts or agreements
Interstate Civil Defense Compacts - D.C. Code §§ 6-141[illegible] – 1954
Mayor - Authorizes the mayor to enter into compacts to provide mutual aid among states in times of disaster, crisis or other emergency

APPENDIX B

NEW JERSEY CO-CREATED BI-STATE AND INTERSTATE ENTITIES	
Entity	**Number of Employees**
Delaware River and Bay Authority	400
Delaware River Port Authority	1,000
Delaware River Joint Toll Bridge Commission	750
Port Authority of New York and New Jersey	7,000
Education Commission of the States	60
Palisades Interstate Park Commission	360
Delaware Valley Regional Planning Commission	80
Interstate Sanitation Commission	11
Delaware River Basin Commission	38
Waterfront Commission of New York Harbor	50
TOTAL	**9,749**

SOURCE: Counsel's telephone interviews with counsel and staff of listed bi-state and interstate entities, as of August 1, 1997.

Supreme Court, U.S.
FILED
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No. 97-81

In the Supreme Court of the United States

OCTOBER TERM, 1997

THE DELAWARE RIVER AND BAY AUTHORITY,
Petitioner,

v.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 68, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

BRIEF AMICUS CURIAE OF THE STATE OF DELAWARE IN SUPPORT OF PETITIONER

M. JANE BRADY
Attorney General
State of Delaware
Department of Justice
820 North French Street
Wilmington, DE 19801
(302) 577-8400

LAWRENCE S. ROBBINS
Counsel of Record for the Amicus
PETER C. CHOHARIS
Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 463-2000

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INTEREST OF AMICUS CURIAE

The State of Delaware is one of the parties to the Delaware–New Jersey Compact ("Compact") establishing the Delaware River and Bay Authority ("DRBA" or "Authority"). As such, Delaware is vitally interested in the manner in which the Compact is enforced. In this case, the New Jersey Supreme Court — in direct conflict with decisions of other state high courts — imposed on the Authority the duty to bargain collectively with its employees, even though the Compact expressly reserves to the Authority (and only the Authority) the power "to fix and determine * * * all * * * conditions and terms of employment." Compact art. VII(e). The Court imposed that far-reaching obligation because, in its view, "complementary or parallel legislation" of both states generally recognizes the right of public sector employees to bargain collectively with their employers. Although the relevant legislation of each state is not identical, and did not purport to alter the terms of the Compact, the New Jersey high court concluded (Pet. App. 12a) that "[i]n effect, the legislatures have modified the Compact."

If allowed to stand, the New Jersey high court's decision would vest in the state courts of *one* contracting state the power to rewrite the Compact, thereby violating the basic principle that "bi-state entities created by compact * * * are not subject to the unilateral control of any one of the States that compose the federal system" (*Hess* v. *Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 42 (1994)). Although the court below did not and could not find that Delaware actually consented to the imposition of collective bargaining rights on the Authority, the court felt free to infer such consent from some general legislation concerning public employee bargaining rights. In fact, the State of Delaware has never agreed that collective bargaining duties should be imposed on the DRBA, and the decision below thus represents a direct infringement of the principles of state sovereignty that underlie both the Compact itself and, more generally, the Compact Clause of the United States Constitution (art. I, § 10, cl. 3). The decision below also works an implied repeal of

the Compact, in that it imposes collective bargaining obligations on the Authority in express contravention of the text of the bistate agreement. Delaware therefore submits this brief in support of the Authority's petition for a writ of certiorari.

INTRODUCTION AND SUMMARY OF ARGUMENT

Article VII(e) of the Compact unambiguously reserves to the Authority the power "to fix and determine * * * all * * * conditions and terms of employment." Pet. App. 59a. The court below surmised (*id.* at 12a), however, that Delaware and New Jersey have "[i]n effect * * * modified the Compact" by enacting "complementary and parallel" labor statutes. Although the statutes concededly are "not identical," and do not purport to cover bistate agencies at all (much less the DRBA in particular), the New Jersey high court concluded that Article VII(e) has effectively been abrogated.

As petitioner persuasively demonstrates (Pet. 12-20), the decision of the New Jersey high court cannot be squared with this Court's Compact Clause cases and flatly conflicts with decisions of other state high courts. Moreover, if uncorrected, the decision will, as petitioner also shows (Pet. 21-29), significantly disrupt the operation of the DRBA and other interstate agencies. Beyond those important reasons for granting review, the decision below also impairs the sovereignty of the State of Delaware and effects an implied repeal of federal legislation, in contravention of this Court's precedents. For those two reasons as well, as we set out below, the petition for a writ of certiorari should be granted.

A. This Court's Compact Clause cases recognize that contracting states surrender a portion of their sovereignty when they enter into bistate agreements. In return, however, states are entitled to insist that the terms of the compact be strictly enforced. Consistent with that basic premise, this Court has applied the plain meaning of compact provisions, even when a modification of the text may have served some

practical purpose. Were courts free to depart from the text of the compact, states might relinquish a part of their sovereignty only to discover — as Delaware has discovered in this case — that the bargain they thought they had struck has been altered without their consent.

The New Jersey Supreme Court's decision in this case violates this basic principle of state sovereignty. In place of the unambiguous text of the Compact, the court below substituted a highly debatable inference that it derived, not from the Compact itself, but from "complementary and parallel" legislation in the contracting states. It did so notwithstanding the fact that the legislation in question does not purport to cover the DRBA, much less modify the Compact. In the process, the court effectively circumvented the procedures prescribed by the Compact for imposing new obligations on the Authority — procedures that are designed to promote, not undermine, principles of state sovereignty. As a consequence the State of Delaware — which has never consented to the imposition of collective bargaining obligations on the Authority — has been deprived of its right, as a separate sovereign, to exercise its own views as to how the affairs of a bistate entity should be conducted.

B. "[A] congressionally approved compact is both a contract and a statute." *Oklahoma* v. *New Mexico*, 501 U.S. 221, 235 n.5 (1991). As federal *statutes*, compacts are subject to the well-settled principle that "repeals by implication are not favored." *Randall* v. *Loftsgaarden*, 478 U.S. 647, 661 (1986). Only where the "intent to repeal is 'clear and manifest'" (*Rodriguez* v. *United States*, 480 U.S. 522, 524 (1987)), may a court infer that a compact (or any other federal statute) has been impliedly repealed by some later legislation.

In substance, the court below held that New Jersey and Delaware labor laws have impliedly repealed the crucial portion of the Compact reserving to the Authority the power "to fix and determine * * * all * * * conditions and terms of

employment" (art. VII(e)). But there is no evidence, much less "clear and manifest" evidence, that the state legislation in question was intended to "modify" (Pet. App. 12a) the Compact. In this respect as well, the decision below cannot be squared with this Court's precedents. The petition for a writ of certiorari should be granted.

ARGUMENT

I. THE NEW JERSEY SUPREME COURT'S DECISION UNDERMINES THE PRINCIPLES OF STATE SOVEREIGNTY UNDERLYING THE COMPACT CLAUSE AND EMBODIED IN THE COMPACT AT ISSUE IN THIS CASE

1. "The States, as separate sovereigns, are the constituent elements of the Union. Bistate entities, in contrast, typically are creations of three distinct sovereigns: two States and the Federal government." *Hess*, 513 U.S. at 40. As this Court pointed out in *Hess*, "'[a]n interstate compact, by its very nature, shifts a part of a state's authority to another state or states, or to the agency the several states jointly create to run the compact.'" *Id.* at 42 (quoting M. Ridgeway, *Interstate Compacts: A Question of Federalism* 300 (1971)). In essence, "[a] state, in entering into a compact, surrenders a portion of its own sovereignty to the other compact states and the federal government, and agrees to be bound by the compact terms and conditions, absent the concerted action of the compact states to alter them with the consent of Congress." Pet. 13.

In return for this partial surrender of sovereignty, however, states are entitled to insist that the terms of the compact be strictly enforced. "Because each state relinquishes a portion of its sovereignty to enter into an interstate compact, the resulting bi-state agency is established *with precisely limited powers* over which the states may only exercise joint control." Pet. App. 25a (emphasis added). Once established, these "precisely limited powers" should not be subject to modification without the consent of each of the contracting

states. To paraphrase this Court's decision in *Pennhurst State Sch. and Hosp.* v. *Halderman*, 451 U.S. 1, 17, 25 (1981) — involving legislation enacted under Congress's spending power — "[t]he legitimacy" of a State's surrender of partial sovereignty "rests on whether the State voluntarily and knowingly accepts the terms of the 'contract,'" and it is inconsistent with that premise to construe such agreements in a manner that "surpris[es] participating States with postacceptance or 'retroactive' conditions."

This principle has particular force because interstate compacts routinely govern areas of public life in which the authority of individual states would otherwise be plenary. See Heron, *The Interstate Compact in Transition: From Cooperative State Action to Congressionally Coerced Agreements*, 60 St. John's L. Rev. 1, 2 (1985) (among the approximately 176 operative compacts are those governing "flood control, corrections, and mass transit"). States yield their authority in these and other areas only on the premise that the terms of their agreements will be scrupulously honored. They don't expect surprises.

Indeed, consistent with this basic sovereignty principle, this Court has strictly enforced compact terms — even where altering the compact may have made practical sense. *Texas* v. *New Mexico*, 462 U.S. 554 (1983), which construed the Pecos River Compact, illustrates the point. The Compact sought to resolve certain disputes between Texas and New Mexico regarding the allocation of waters of the Pecos River. Toward that end, the Compact established a Commission consisting of one voting member from each state and a nonvoting representative of the United States. Unfortunately, however, the two voting members could not agree on a particular matter, and the Special Master, sensing a stalemate in the making, sensibly recommended that the United States representative, or some third party, be empowered to break the tie.

This Court sustained an exception to the Special Master's recommendation. True, the Court observed (462 U.S. at 565), "the structural likelihood of impasse on the Pecos River Commission is a serious matter," and the parties "might well consider amending their Compact to provide for some mutually acceptable method for resolving paralyzing impasses such as the one that gave rise to this suit." Nevertheless, the Court added (*id.* at 564-565), "[t]o provide a third, tie-breaking vote on regular Commission business would be to alter fundamentally the structure of the Commission." That result, the Court held, however practical it may be, was simply impermissible: "[N]o court may order relief inconsistent with [the] express terms" of the Compact. *Id.* at 564-565.

This Court's cases also recognize that, *if* the terms of a compact are to be altered, such an alteration may not be effected through the actions of only *one* of the contracting states. "[B]istate entities created by compact * * * are not subject to the unilateral control of any one of the States that compose the federal system." *Hess*, 513 U.S. at 42. "It requires no elaborate argument to reject the suggestion that an agreement solemnly entered into between States by those who alone have political authority to speak for a State can be unilaterally nullified, or given final meaning by an organ of one of the contracting States." *Dyer* v. *Sims*, 341 U.S. 22, 28 (1951). After all, "[a] State cannot be its own ultimate judge in a controversy with a sister State." *Ibid.*

2. The Compact at issue in this case embodies these important sovereignty principles, ensuring that each contracting state's interests will be fully accounted for in any action taken by the Authority. Pursuant to the terms of the Compact, the DRBA is governed by a twelve-member board of commissioners, consisting of six residents of each state, appointed by the governor of their respective states. Compact art. V. Moreover, any action taken by the Board must be approved by at least four commissioners from each state. *Id.* art. VI. And even then, the governor of either state may

cancel the vote of one or more of that state's commissioners, effectively giving each state the ability to veto the Authority's actions. *Ibid.*

These careful, structural protections of each state's sovereignty reflect the same premise that animates this Court's Compact Clause cases. Although "the creation of an interstate agency requires each State to relinquish to one or more sister States a part of its sovereignty" (*Port Auth. Trans-Hudson Corp.* v. *Feeney*, 495 U.S. 299, 314 (1990) (Brennan, J., concurring in part and concurring in the judgment)), that surrender of sovereignty is only partial. In return for their cession of some measure of sovereignty, the contracting states are entitled to a strict enforcement of their compact and an assurance that neither state can unilaterally alter the terms of the deal.

3. The decision below violates these fundamental sovereignty principles. The New Jersey high court explained (Pet. App. 10a) that New Jersey and Delaware have "substantially similar" legislation regarding the bargaining rights of public employees. True, the court noted, the two states' laws are "not identical" (*id.* at 12a). Nor do the laws in question actually purport to amend the Compact, and the court did not suggest otherwise. Nonetheless, the court held (*ibid.*), because "the legislatures of both states have concluded that public employees should have the right of collective negotiation and that employers should not interfere with that right," it follows that "[i]n effect, the legislatures have modified the Compact."

The New Jersey high court may or may not be correct as a matter of social policy, but it is surely mistaken as a matter of Compact law. As this Court made clear in *Texas* v. *New Mexico*, 462 U.S. 554, courts are not free to rewrite the terms of a Compact. Yet that is exactly what the court below has done. Drawing inferences from some general legislation in the two contracting states, the court vitiated the plain language

of Article VII(e), which unambiguously reserves to the Authority, in its exclusive discretion, the power "to fix and determine * * * all * * * conditions and terms of employment."

The court simply had no warrant for acting as it did. Merely because the two states may have separately enacted "complementary" or "parallel" legislation regarding public employee bargaining cannot, standing alone, give rise to an inference that the two states intended to modify the Compact. Indeed, such an inference is unusually ill-founded in this case, as the laws in question are "similar" (Pet. App. 10a) only when considered at a high level of generality; the devil, as always, is in the details. As Justice Garibaldi explained in dissent (Pet. App. 20a-21a), the two states' laws differ in a variety of important respects. See also 19 *Del. C.* § 1302(m) (excluding various categories of employees from the scope of public employee bargaining rights).

In short, it makes no sense to infer an intent to modify the Compact from legislation that does not purport to do so. In fact, as petitioner explains (Pet. 5, 16), when New Jersey and Delaware *intended* to modify the Compact — to subject the DRBA to their parallel environmental laws — they did so by enacting nearly identical legislation and stated in express terms that the legislation was intended to cover the Authority and amend the Compact. See Pet. 16 n.13. Plainly, the two states knew how to modify the Compact when they wanted to do so. By contrast, the State of Delaware did not seek to make the modification at issue in this case and has not consented to it. Under the reasoning of the New Jersey Supreme Court, however, Delaware's intent is of no moment, so long as a single state court — reasoning from very general, "complementary and parallel" legislation — infers an intent to alter the bistate agreement.

The New Jersey high court's basic alteration of the Compact constitutes a direct affront to Delaware's sovereignty.

Had the commissioners themselves adopted this change in the agreement, their decision to do so would have been subject to the Governor's veto. By judicial fiat, however, the New Jersey high court deprived the Governor, and thus the State, of their basic prerogatives. The petition should be granted so that Delaware's rights are not held hostage to "the unilateral control" (*Hess*, 513 U.S. at 42) of a New Jersey state court.

II. THE NEW JERSEY SUPREME COURT'S DECISION WORKS AN IMPLIED REPEAL OF A PROVISION OF THE COMPACT, AND THUS OF FEDERAL LAW, IN VIOLATION OF THIS COURT'S CASES

1. "[O]nce given, congressional consent transforms an interstate compact * * * into a law of the United States." *Texas* v. *New Mexico*, 462 U.S. 554, 564 (1983). Indeed, as this Court explained in *Oklahoma* v. *New Mexico*, 501 U.S. 221, 235 n.5 (1991), "a congressionally approved compact is both a contract and a statute." As such, bistate compacts are therefore subject to the principles in this Court's cases governing the construction of federal statutes.

Among those is the "cardinal principle * * * that repeals by implication are not favored." *Randall* v. *Loftsgaarden*, 478 U.S. 647, 661 (1986). Accord, *Ruckelshaus* v. *Monsanto Co.*, 467 U.S. 986, 1017 (1984); *Radzanower* v. *Touche Ross & Co.*, 426 U.S. 148, 154 (1976). Only where there is an "irreconcilable conflict" between an earlier and later statute (*Randall*, 478 U.S. at 661), and the "intent to repeal is 'clear and manifest'" (*Rodriguez* v. *United States*, 480 U.S. 522, 524 (1987)), may a court infer that the latter statute works an implied repeal of the former. And that is true even where the latter statute is said to effect only a "partial," not a wholesale, repeal of the former. *Randall*, 478 U.S. at 661.

2. In effect, the court below held that New Jersey and Delaware repealed a key portion of the Compact by enacting "substantially similar" statutes governing public employee

bargaining. By its terms, the Compact reserves only to the Authority the power to "fix and determine" the terms and conditions of employment. Compact art. VII(e). According to the New Jersey Supreme Court, however, the contracting states "modified the Compact" (Pet. App. 12a) by enacting general labor law provisions governing public employees. The court so held despite the fact that neither state's legislation even alluded to the Compact or to the Authority.

That ruling cannot be squared with this Court's cases. There is no conflict at all, much less an "irreconcilable conflict," between the Compact and the two states' labor laws. Nor is there any language, much less "clear and manifest" language, which suggests that the labor provisions were intended to repeal a crucial provision of the Compact. Because the state labor laws make no mention of the Compact, and do not purport to apply to bistate agencies, they should not be applied to the Authority. Put another way, since the statutes are "capable of co-existence," it was "the duty of the courts * * * to regard each as effective." *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 133 (1974) (quotation marks and citation omitted).

That is especially true in light of the generality of the state labor provisions on which the court below relied. In contrast to Article VII(e) of the Compact — which deals narrowly and specifically with the labor law duties of the DRBA — the Delaware and New Jersey statutes invoked by the New Jersey high court purport to deal with public employees generally, making no mention of bistate agencies like the Authority in particular. Yet "[i]t is a basic principle of statutory construction that a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum, * * * unless the later statute expressly contradict[s] the original act or unless such a construction is absolutely necessary . . . in order that [the] words [of the later statute] shall have any meaning at all." *Traynor* v. *Turnage*, 485 U.S. 535, 547-548

(1988) (internal quotation marks deleted; bracketed text in the original). "As always, '[w]here there is no *clear* intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment.'" *Crawford Fitting Co.* v. *J.T. Gibbons, Inc.*, 482 U.S. 437, 445 (1987) (emphasis in the original). Surely there was no "clear" intention to cover the Authority in the two states' public employee statutes. To the contrary, the state statutes dealt generically with public employees, but did not address the Compact in any way.

In the New Jersey Supreme Court's view, however, the absence of any such explicit intent to modify the Compact was beside the point. For the court below, it sufficed that the state labor laws were "substantially similar" (Pet. App. 10a) and generally provided "that public employees should have the right of collective negotiation and that employers should not interfere with that right" (*id.* at 12a). Without any more explicit evidence than that, the court below surmised that Delaware and New Jersey had elected to "modif[y] the Compact." *Ibid.*

That ruling is plainly mistaken. As Justice Garibaldi correctly observed in dissent below, "such legislation cannot and should not be used to repeal the Compact." Pet. App. 14a. For that reason as well, the petition should be granted and the judgment of the New Jersey Supreme Court reversed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

M. JANE BRADY
Attorney General
State of Delaware
Department of Justice
820 North French Street
Wilmington, DE 19801
(302) 577-8400

LAWRENCE S. ROBBINS
Counsel of Record for the Amicus
PETER C. CHOHARIS
Mayer, Brown & Platt
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 463-2000

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REPLY BRIEF FOR PETITIONER

JOHN G. ROBERTS, JR.*
GREGORY G. GARRE
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5810

O. FRANCIS BIONDI
JON E. ABRAMCZYK
MORRIS, NICHOLS, ARSHT & TUNNELL
1201 North Market Street
P.O. Box 1347
Wilmington, Delaware 19899
(302) 658-9200

Counsel for Petitioner

Of Counsel:
WAYNE J. POSITAN
LUM, DANZIS, DRASCO, POSITAN & KLEINBERG, LLC
103 Eisenhower Parkway
Roseland, N.J. 07068
(201) 403-9000

* Counsel of Record

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On Petition for a Writ of Certiorari to the Supreme Court of New Jersey

REPLY BRIEF FOR PETITIONER

1. As the diverse amicus participation alone confirms, the importance of this case is by no means confined to the "single, mundane question" (Opp. 2) respondents tactically chose to frame in their opposition. The State of Delaware—through its attorney general—has filed a brief in support of certiorari, explaining that the New Jersey high court decision in this case "constitutes a direct affront to Delaware's sovereignty." Del. Br. 8. Three major interstate compact authorities that, along with DRBA, operate in the commercially vital New Jersey region have also filed briefs in support of certiorari, explaining that the decision will impede their operations and eliminate "the very purpose of establishing independent bi-state agencies under the Compact Clause." Port Auth. Br. 4; *see* DRPA Br. 4-5; Waterfront Comm'n Br. 3. And a labor organization representing the employees of several interstate compact agencies has taken the unusual step of filing an amicus brief in opposition to certiorari, an action which says far more about the general importance of this case than anything in the amicus brief itself.

In granting discretionary review, the New Jersey Supreme Court itself recognized this case as one of general importance, *see* Pet. 8, and the court's lengthy opinion and thoughtful dissent are a testament to its significance. To avoid plenary review, respondents attempt to confine the New Jersey Supreme Court ruling to DRBA and this specific Compact, but the decision itself explicitly refutes any such limitation. In adopting the rule of law challenged in the petition, the New Jersey Supreme Court "conclude[d]" in open-ended terms "that a bi-state agency, *such as* the DRBA, is subject to the law of New Jersey when * * * both [compact] states have adopted complementary or parallel legislation." Pet. App. 12a (emphasis added). The court even acknowledged that the "effect" of its decision was implicitly to "modif[y] the Compact," *id.* 12a, confirming that it well understood the import of its ruling.

This in turn prompted a sharp dissent by Justice Garibaldi who—like the majority—squarely addressed the question presented by the petition. Thus, relying upon the New York high court decision in *Malverty* v. *Waterfront Commission of New York Harbor*, 524 N.E.2d 421 (N.Y. 1988), the dissent explained—again, without limitation to DRBA or the Compact here—that "[s]imilar public policy in two states is not sufficient to render one state's legislation applicable to a bi-state agency's employment practice." Pet. App. 19a. *See also id.* 21a ("In conclusion, I find that complementary or parallel state laws cannot repeal the language of the Compact."). The majority's contrary ruling, in the dissent's words, "completely disregards the long-standing precedents requiring legislatures to agree expressly before a state can impose duties and obligations on a bi-state agency." *Id.* 19a-20a.

Respondents suggest that the stark analytical divide between these positions is illusory because the majority acknowledged in passing that " '[a] single state may not

unilaterally impose additional duties on a bi-state agency.' " Opp. 2-3 n.1 (quoting Pet. App. 9a). But, as is clear from the decision itself, and as the dissent explained, the end result if not the *raison d'etre* of the New Jersey Supreme Court approach—what respondents' amicus refers to as the New Jersey doctrine of "parallelism," Grand Lodge Br. 8—is to circumvent this cardinal rule. Thus, the majority reasoned that, "[a]though a single state may not unilaterally impose its will on a bi-state agency, the creator states together may subject the agency to complementary or parallel state legislation," as discerned, that is, by the courts of a single compact state. Pet. App. 10a.

Respondents' efforts to show that New Jersey and Delaware have in fact adopted "complementary or parallel" labor laws or policies are therefore for naught. *See* Opp. 3-6. The federal question presented—the one over which the New Jersey Supreme Court divided—is whether the existence of such general laws or policies permits the courts of one compact state to amend an interstate compact in the absence of the express legislative consent of the compact states or Congress. As elaborated by the amici compact authorities, *see* Port Auth. Br. 4; DRPA Br. 4-5; Waterfront Comm'n Br. 3, the importance of this question is by no means limited to DRBA or the Compact here.[1]

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[1] As the amici compact authorities have explained, the provision of the DRBA (Article VIII) barring the imposition of any additional duties or obligations upon the Authority without the legislative consent of both states is "common to most compacts." Port Auth. Br. 4. *See, e.g.*, Waterfront Comm'n Br. 4 (reproducing provision). Article XV of the DRBA Compact in no way alters that common command, or otherwise sanctions judicial amendment of the Compact. Rather, it simply confers jurisdiction to hear certain disputes involving the compact authority. *See* Pet. App. 65a (Article XV). Thus, the New Jersey Supreme Court did not mention, let alone invoke, Article XV in "conclud[ing] that a bi-state agency, such as DRBA, is subject to the law of New Jersey when * * * both states have adopted complementary or parallel legislation." Pet. App. 12a.

This case is an ideal vehicle to address this important question. The issue was carefully considered by the court below, producing thoughtful opinions on both sides of the coin. Application of the challenged rule has—as the court itself recognized—"modified the Compact" (Pet. App. 12a), intruding upon DRBA's exclusive authority to "fix and determine * * * all * * * conditions and terms of employment," Compact art. VII(e), by foisting upon DRBA an entirely new obligation in an area of labor relations central to any employer's mission. *See* Pet. 21-22 & n.17.[2] And the decision in this case has brought New Jersey into conflict with its sister compact states over a basic question concerning the construction and governance of numerous interstate compacts, prompting the State of Delaware and the major compact authorities operating in the New Jersey area to urge this Court to grant certiorari.

2a. Respondents are no less adventuresome when it comes to dealing with the obvious conflict implicated by this case, going so far as to suggest that "the holding and rationale of *Malverty* have no pertinence here." Opp. 7.[3] They do so based on the fact that the New York

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[2] Despite respondents' suggestion to the contrary (Opp. 4-5 & n.2), judicial imposition of this duty plainly contradicts Articles VII(e) and VIII of the Compact, not to mention DRBA's long-standing policy—adopted pursuant to Article VII(e)—that it has no "obligation to engage in collective bargaining with its employees or their chosen representatives." DRBA Personnel Manual art. XIV. Thus, as the dissent explained, the New Jersey decision not only amends but "repeal[s] the language of the Compact." Pet. App. 21a. *See id.* 19a; Del. Br. 8-10. Any suggestion that the State of Delaware—New Jersey's sovereign equal in the operation of DRBA—has consented to this repeal is belied by Delaware's brief in support of certiorari.

[3] Respondents characterize *Malverty* as a "per curiam opinion." Opp. 6. To be clear, *Malverty* is a reported decision of the New York high court that was expressly concurred in by all seven New York high court justices, has full precedential effect, and has been

high court in *Malverty* emphasized that the New York antidiscrimination statute does not state that it was intended to apply to interstate compact authorities or to amend any compact agreement. *See id.* (citing 524 N.E.2d at 422).[4] It is undisputed that the same is true of the New Jersey collective bargaining statute. But the New Jersey Supreme Court below held that such express legislative intent was unnecessary since, "[a]s a matter of public policy, the legislatures of both states have concluded that public employees should have the right of collective negotiation," Pet. App. 12a; whereas the New York high court in *Malverty* held that the fact that the compact "States have evinced the same, or similar public policy * * * by enacting similar 'antidiscrimination' laws is *not* sufficient * * * to render [a compact] properly amended or supplemented," 524 N.E.2d at 422 (emphasis added; citation omitted). The conflict could hardly be more express.

The New Jersey Supreme Court has recognized *Malverty* as contrary authority, standing for the proposition that the "similar public policy of two states does not suffice to render one state's legislation applicable to [a] bi-state Commission[]." *Eastern Paralyzed Veterans Ass'n*

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cited for the general proposition that interstate compacts may not be altered or amended by courts construing so-called "complementary or parallel" legislation. *See, e.g., Baron* v. *Port Auth. of N.Y. & N.J.*, 968 F. Supp. 924, 929 (S.D.N.Y. 1997); *Eastern Paralyzed Veterans Ass'n* v. *City of Camden*, 545 A.2d 127, 132 (N.J. 1988); Pet. App. 19a.

[4] Respondents and their amicus attempt to portray the New York practice of expressly identifying by *legislation* which laws are intended to apply to interstate compact authorities as "unique." Grand Lodge Br. 15; *see* Opp. 7. But that practice—not the one sanctioned by the court below—is the norm. Thus, when New Jersey and Delaware in fact intended to extend their general environmental laws to DRBA, they each passed nearly identical legislation expressly amending the Compact—which was later approved by Congress—specifically extending the states' general environmental statutes to DRBA. *See* Pet. 16 & n.13.

v. *City of Camden*, 545 A.2d at 132, discussed at Pet. 18. The dissent below expressly invoked the *Malverty* rule in urging the contrary result. Pet. App. 19a. Respondents' own amicus felt obliged to concede that *Malverty* "display[s] a[] degree of displeasure" with the New Jersey doctrine of parallelism. Grand Lodge Br. 14. And respondents themselves all but acknowledged the conflict when, in attempting to side-step *Malverty* in the court below, they argued that, "given the New Jersey * * * courts developing theory of regulation of bi-state agencies," the *Malverty* rule was inapplicable. Reply Br. of Pls.-Resps. in Reply to Br. of *Amicus Curiae* Port Auth. of N.Y. & N.J. in N.J. S. Ct., p. 8.[5]

The federal courts, too, have taken notice of this conflict. As the New York district court recently explained in *Baron* v. *Port Authority of New York and New Jersey*, 968 F. Supp. at 929, in dismissing an argument based on the New Jersey rule:

> Plaintiffs * * * argu[e] that because New York and New Jersey laws against age discrimination are parallel, they are applicable to [the compact agency]. In *Bunk* v. *Port Authority of New York and New Jersey*, 676 A.2d 118 (N.J. 1996), the court found that "* * * [a] bi-state agency * * * *may* be subject to complementary or parallel state legislation." 676 A.2d at 122 (emphasis added). However, in New

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[5] In the same brief, respondents argued that the decision in *Bailey* v. *Port Authority of New York and New Jersey*, No. 40149-92 (N.Y. Sup. Ct. May 18, 1994), *aff'd without op.*, 627 N.Y.S.2d 921 (N.Y. App. Div. 1995)—in which the New York court, following the *Malverty* approach, rejected the argument that the New York Human Rights Law applied to the Port Authority—was incorrect because, as respondents put it, "the New York court did not consider the crucial issue of whether New York's Human Rights Law and the New Jersey Law Against Discrimination were substantially similar and complementary statutes." Reply Br., p. 9. But of course, while that issue may be "crucial" under the New Jersey approach, it has no place under the conflicting New York rule.

> York it has been established that in order for a law to be applicable to [the compact agency], the statute must *expressly* state that the "legislation [is] amending a certain portion of the 'Compact' *and* that the new law would take effect upon the enactment into law by New Jersey of legislation having an effect identical to New York's legislation." *Malverty* v. *Waterfront Commission of New York Harbor,* 524 N.E.2d 421, 422 (N.Y. 1988) (emphasis added). For New York, "that the two states have evinced the same, or similar, public policy regarding employment opportunities * * * by enacting similar 'antidiscrimination' laws is not sufficient under the express terms of the 'Compact,' " *id.*, to make [the compact agency] subject to the law of either state.

Such a clear conflict of authority concerning the construction and governance of interstate compacts—special instruments of federal law, *see* Pet. 14-15—alone warrants plenary review by this Court. *See* S. Ct. Rule 10(b). But because this conflict directly impacts the operation of numerous interstate compact authorities in a commercially vital region of this country, *see* Pet. 25-27 & n.19; Port Auth. Br. 5-7; Waterfront Comm'n Br. 8-10, and directly infringes the sovereign interests of the compact states in this region, *see* Del. Br. 8, plenary review is especially appropriate. Indeed, because of the "public importance" of disputes of this nature, this Court has seen fit to grant certiorari in cases involving disputes over the construction of a single interstate compact. *Delaware River Joint Toll Bridge Comm'n* v. *Colburn,* 310 U.S. 419, 427 (1940). *See also West Virginia ex rel. Dyer* v. *Sims,* 341 U.S. 22 (1951). As the amicus filings underscore, this case bears directly upon numerous interstate compacts.

b. Respondents are also quite wrong in suggesting that New Jersey and Delaware are in agreement on this issue. Indeed, the State of Delaware urges this Court to grant plenary review because, in working an implied repeal of

the Compact, "the New Jersey high court deprived the Governor, and thus the State, of their basic prerogatives" under the Compact. Del. Br. 9. And, despite respondents' suggestion to the contrary, the decision below is hardly consistent with *Delaware River and Bay Authority* v. *Carello*, 222 A.2d 794 (Del. Ch. 1966). In *Carello* the Delaware court refused to impose upon DRBA the same duty imposed upon it by the New Jersey high court below, because, in the Delaware court's view, doing so would impermissibly amend the Compact without the requisite consent of both States. *Id.* at 798-799.[6] As explained in the petition, the New Jersey courts had shared this view until the decision below brought New Jersey into conflict with Delaware over whether the Authority is required to bargain collectively with its employees. *See* Pet. 18-19.[7]

The New Jersey Supreme Court decision also runs afoul of this Court's own precedents, including those establishing that "bistate entities created by compact * * * are not subject to the unilateral control of any of the States that compose the federal system," *Hess* v. *Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 42 (1994); that "a congressionally approved compact is both a contract and a statute" that may not be altered by the courts (state or federal), *Oklahoma* v. *New Mexico*, 501 U.S. 221, 235

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[6] Respondents argue that was simply because of the absence of parallel general legislation, but the *Carello* court specifically noted that "joint action by both Delaware and New Jersey designed to advance the rights of *bridge employees* in the field of collective bargaining"—*i.e.*, legislation specifically directed to DRBA employees —"may well be needed." 222 A.2d at 799 (emphasis added). That is a far cry from the type of general laws and policies that the New Jersey high court relied upon to impose upon DRBA a newfound collective bargaining duty in this case. *See* Pet. App. 12a.

[7] As explained, the New Jersey high court ruling also conflicts with the decisions of the Pennsylvania high court, *see* Pet. 18-19; DRPA Br. 6-10, as well as with the decisions of numerous other state and federal courts beyond the Delaware River Basin. *See* Pet. 19-20 & n.16.

n.5 (1991); *see Texas* v. *New Mexico*, 462 U.S. 554, 566 (1983); and that, as federal law, an interstate compact can only be amended with the consent of Congress, *Cuyler* v. *Adams*, 449 U.S. 433, 438-439 (1981). *See* Pet. 12-16; Del. Br. 4-10. Tellingly, respondents do not even attempt to reconcile the decision with these precedents.[8] Nor do they take issue with this Court's special "function and duty" to resolve disputes of this nature, *Sims*, 341 U.S. at 28; *see* Pet. 29-30, which provides further support for granting certiorari. *See* S. Ct. Rule 10(c).[9]

3. Ordinarily, a state court ruling is confined to the state in which it was rendered and the parties before it. In the field of interstate compacts, however, such a ruling "brings in issue the rights of other States and the United States." *Sims*, 341 U.S. at 28. The New Jersey Supreme Court decision in this case not only has thrown New Jersey into conflict with its neighboring states on an important question of federal law, but has worked an implied repeal of an interstate compact without the legislative

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[8] Respondents' only response seems to be that "Congressional approval is only necessary to amend the express terms of a compact." Opp. 9. As the dissent below explained, however, the New Jersey high court did just that. *See* Pet. App. 14a ("The Court has done what the Legislatures of New Jersey and Delaware have not—amend the congressionally-approved Interstate Compact"); note 2, *supra*; Pet. 21.

[9] The analytical infirmities of the New Jersey Supreme Court rule are amply demonstrated by the decision below. Respondents' own amicus, however, has highlighted the indeterminate nature of the New Jersey doctrine of parallelism. According to the Grand Lodge: "Legislative enactments need not be 'identical' in each creator state to be given parallel effect; all that is necessary is that the laws be 'substantially similar,' and articulate a 'central' or 'dominant theme' in respective public policies of the states." Grand Lodge Br. 8 (citations to New Jersey court decisons omitted). Such a cavalier inquiry affords none of the protections to the sovereign interests of the compact states mandated by this Court's precedents, *see* Pet. 12-14, and completely disregards the contract principles this Court has employed in construing interstate compacts, *id.* 15 n.12.

consent of the compact states or Congress. It has left the compact states with no recourse but to turn to this Court to protect "their basic prerogatives." Del. Br. 9. And, by inviting "discord and a destruction of the purposes for which * * * bi-state agencies are formed" (Pet. App. 20a), it has threatened interstate compact operations in a region of the country which, to date, has been uniquely served by the interstate compact device, benefiting the Nation as a whole. This Court should grant certiorari and clarify the proper role of state courts in this important federal sphere.

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For the foregoing reasons, and those in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN G. ROBERTS, JR.*
GREGORY G. GARRE
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5810

O. FRANCIS BIONDI
JON E. ABRAMCZYK
MORRIS, NICHOLS, ARSHT
& TUNNELL
1201 North Market Street
P.O. Box 1347
Wilmington, Delaware 19899
(302) 658-9200

Counsel for Petitioner

Of Counsel:
WAYNE J. POSITAN
LUM, DANZIS, DRASCO,
POSITAN & KLEINBERG, LLC
103 Eisenhower Parkway
Roseland, N.J. 07068
(201) 403-9000

* Counsel of Record